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# federal register

Tuesday
February 3, 1998

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**WHERE:** Office of the Federal Register
Conference Room
800 North Capitol Street NW.,
Washington, DC
(3 blocks north of Union Station Metro)
**RESERVATIONS:** 202–523–4538

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# Rules and Regulations

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

**[Docket No. 29122; Amdt. No. 1849]**

**RIN 2120–AA65**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Air Office which originated the SIAP.

*For Purchase*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantage of incorporation by the reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedures identification and the amendment number.

### The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 23, 1998.

**Richard O. Gordon,**

*Deputy Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
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| 01/08/98 | TX | Amarillo | Amarillo Intl | FDC 8/0239 | NDB OR GPS RWY 4, AMDT 16... |
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| 01/12/98 | IA | Des Moines | Des Moines Intl | FDC 8/0301 | ILS RWY 31R, AMDT 20... |
| 01/13/98 | MN | Montevideo | Montevideo-Chippewa County | FDC 8/0318 | VOR OR GPS RWY 14, AMDT 4... |
| 01/13/98 | ND | Gwinner | Gwinner-Roger Melroe Field | FDC 8/0325 | NDB OR GPS RWY 34, ORIG... |
| 01/15/98 | NC | Kenansville | Duplin County | FDC 8/0380 | NDB OR GPS RWY 22, AMDT 5... |
| 01/5/98 | NC | Kenansville | Duplin County | FDC 8/0384 | LOC RWY 22, ORIG... |
| 01/15/98 | TX | Bridgeport | Bridgeport Muni | FDC 8/0374 | VOR/DME RWY 17, ORIG... |
| 01/15/98 | TX | Decatur | Decatur Muni | FDC 8/0376 | VOR/DME RWY 16, AMDT 1... |
| 01/15/98 | TX | El Paso | El Paso Intl | FDC 8/0377 | VOR OR GPS RWY 26L, AMDT 29A... |
| 01/16/98 | OH | Columbus | Rickenbacker Intl | FDC 8/0401 | ILS RWY 23L, ORIG... |
| 01/18/98 | TX | Amarillo | Amarillo Intl | FDC 8/0245 | VOR RWY 22, ORIG... |

[FR Doc. 98–2586 Filed 2–2–98; 8:45 am]
**BILLING CODE 4910–13–M**

## DEPARTMENT OF COMMERCE

## Bureau of Export Administration

## 15 CFR Parts 740 and 742

**[Docket No. 980113010–8010–01]**

**RIN 0694–AB65**

## Exports of High Performance Computers Under License Exception CTP

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Bureau of Export Administration is amending the Export Administration Regulations (15 CFR parts 730–799) by revising the requirements for exports and reexports of high performance computers. This revision implements Sections 1211–1215 of the National Defense Authorization Act (NDAA) for fiscal year 1998 (P.L. 105–85, 111 Stat. 1629), signed by the President on November 18, 1997.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) and August 15, 1997 (62 FR 43629).

**DATES:** This rule is effective February 3, 1998.

Comments: Comments on this rule must be received on or before March 20, 1998.

**ADDRESSES:** Electronic submission and status tracking of the notices required by this rule will not be available until February 17, 1998. Prior to that date, exporters and reexporters may contact the Bureau of Export Administration at (202) 482–0899 or (202) 482–0436. After February 17, exporters and reexporters may contact STELA at (202) 482–2752. Written comments on this rule should be sent to Hillary Hess, Director, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Hillary Hess, Director, Regulatory Policy Division, Bureau of Export Administration, Telephone: (202) 482–2440.

**SUPPLEMENTARY INFORMATION:**

### Background

The National Defense Authorization Act (NDAA) for FY98 contains provisions regarding exports and reexports of high performance computers. The NDAA establishes requirements for advance notification of exports and reexports of high performance computers and post-shipment verifications of such exports and reexports.

**Export Approvals for High Performance Computers (Sec. 1211)**

Section 1211 of the NDAA requires advance notification of all exports and reexports of computers with CTPs between 2,000 and 7,000 MTOPS to Computer Tier 3 countries. Previously, such computers were eligible for export or reexport to civil end-users under License Exception CTP without prior government review. License Exception CTP prohibits exports, reexports, and retransfers to military or proliferation end-users or end-uses under its terms, and provides that such transactions require licenses. It also excludes from eligibility items that the exporter or reexporter knows will be used to enhance the CTP beyond the eligibility limit allowed to the country of destination. These exclusions remain in effect; therefore, exporters or reexporters who have knowledge of a military or proliferation end-user or end-use, or of a prohibited enhancement, must not submit notifications and continue to be ineligible to use License Exception CTP. Licenses continue to be required for such exports. For CTP-eligible transactions destined to Tier 3 countries, this rule adds the NDAA notification requirement to the terms and conditions of License Exception CTP. Exports and reexports of computers with CTPs greater than 7,000 MTOPS to Tier 3 countries continue to require a license.

To comply with the requirements of the NDAA, exporters and reexporters are now required to submit ''NDAA notices'' for each transaction by completing the Multipurpose Application Form (BXA–748P) including all the information required on that form for a license application, except for selecting ''other'' as the purpose of the application. This designator will automatically place the notice onto a special review track. BXA will refer complete NDAA notices to the Departments of Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA) within 24 hours of date of registration of the request. After February 17, 1998, when BXA completes the changes to its system, NDAA notices may be submitted electronically using the procedure for electronic submission of license applications. Before that date, only paper submissions can be accepted.

Since the NDAA authorizes shipment of the computer ''if no objection is raised within the 10-day period,'' any agency objections must be received by Commerce within nine calendar days of referral. In contrast to the Executive Order on License Processing, under which pre-license checks or requests for additional information may stop the clock, there is no provision for stopping the clock during this procedure. However, BXA will not initiate the registration of NDAA notice unless all the information on the form is complete. Imposition of a license requirement as a result of an objection to an NDAA notice does not constitute ''informing'' or ''knowledge'' for purposes of part 744. Similarly, an interagency decision not to impose a licensing requirement does not excuse the exporter or reexporter from licensing requirements based on knowledge of a prohibited end-use and end-user as referenced in general prohibition five (part 736) and set forth in part 744.

Prior to February 17, 1998, BXA will notify exporters and reexporters of the status of their notifications. After February 17, the application control number on the NDAA notice will allow exporters and reexporters to track their notices by calling STELA. STELA will provide the date of registration of the NDAA notice and a notice number. If no agencies raise objections within the 10-day period, STELA will confirm that you may proceed with the transaction. BXA will issue subsequent written confirmation. STELA will also advise the exporter or reexporter if a license is required. The NDAA notice will then be processed by BXA as a license application in accordance with the procedures described in part 750, and the licensing policies set forth in the Export Administration Regulations. Its NDAA notice number will be changed to a license application number. At this time, BXA may request additional information from the exporter or reexporter to complete the processing of the license application.

**Post-Shipment Verification of Export of High Performance Computers (Sec. 1213)**

The NDAA requires post-shipment verification of exports to Tier 3 countries of computers with a CTP greater than 2,000 MTOPS.

In order to comply with the post-shipment verification requirement, each exporter must provide a written report to BXA within 30 days of export. The report must include the following information: exporter's name, address, and telephone number; the number of the NDAA notice or the license number, whichever is applicable; date of export; end-user's name, a point of contact, address, and telephone number; carrier; air waybill or bill of lading number; commodity description; and quantity. BXA is considering creating a new form that will incorporate these data elements and replace the written report.

Additionally, BXA may require the exporter or exporter's agent to keep records and provide information on any visit to the site he or she conducts, such as for installation or servicing. When a license is required, BXA will continue to require various safeguards by the exporter or exporter's agent as a license condition.

**Savings Clause**

Shipments of items now subject to the NDAA notice requirement as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before February 17, 1998 may be exported without submitting an NDAA notice up to and including February 17, 1998. Any such items not actually exported before midnight February 17, 1998, require an NDAA notice in accordance with this regulation.

**Rulemaking Requirements**

1. This interim rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 52.5 minutes per submission. This rule contains two new information collection requirements approved under control number 0694–0107, ''National Defense Authorization Act'', Advance Notifications and Post-Shipment Verification reports. Advance Notifications using the existing Multipurpose Application Form (BXA–748P) require an estimated 52.5 minutes per submission. Reports in support of Post-Shipment Verifications require 15 minutes per submission, whether the Post-Shipment Verification is conducted on an export authorized under a license or License Exception CTP.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do at the earliest possible time to permit the fullest consideration of views.

The period for submission of comments will close March 20, 1998. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

**List of Subjects**

*15 CFR Parts 740*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 742*

Exports, Foreign trade.

Accordingly, parts 740 and 742 of the Export Administration Regulations (15 CFR parts 730–799) are amended to read as follows:

## PART 740—[AMENDED]

1. The authority citation for part 740 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 61 FR 42527, 3 CFR 1996 Comp., p. 298 (1997); Notice of August 13, 1997 (62 FR 43629, August 15, 1997); and P.L. 105–85, 111 Stat. 1629.

2. Section 740.7 is amended by adding a new paragraph (d)(4), adding a sentence to the end of paragraph (e)(2), and revising paragraph (f) to read as follows:

**§ 740.7 Computers (CTP).**

* * * * *

(d) * * *

(4) *NDAA notification*—(i) *General requirement.* The National Defense Authorization Act (NDAA) of FY98 enacted on November 18, 1997 requires advance notification of all exports and reexports of computers with CTPs between 2,000 and 7,000 MTOPS to Computer Tier 3 countries. For each transaction destined to Computer Tier 3, prior to using License Exception CTP, you must first notify BXA by submitting a completed Multipurpose Application Form (BXA–748P). The Multipurpose Application Form should be completed including all information required for a license application according to the instructions described in Supplement No. 1 to part 748 of the EAR, with two exceptions. You (the applicant as listed in Block 14) shall in Block 5 (Type of Application) mark the box ''Other.'' This designator will permit BXA to route the NDAA notice into a special processing procedure. (Blocks 6 and 7, regarding support documentation, may be left blank.) You must also provide a notice using this procedure prior to exporting or reexporting items that you know will be used to enhance beyond 2,000 MTOPS the CTP of a previously exported or reexported computer. BXA will not initiate the registration of an NDAA notice unless all information on the Multipurpose Application form is complete.

(ii) *Action by BXA.* Within 24 hours of the registration of the NDAA notice, BXA will refer the notice for interagency review. Registration is defined as the point at which the notice is entered into BXA's electronic system.

(iii) *Review by other departments or agencies.* The Departments of Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA) have the authority to review the NDAA notice. Objections by any department or agency must be received by the Secretary of Commerce within nine days of the referral. Unlike the provisions described in § 750.4(b) of the EAR, there are no provisions for stopping the processing time of the NDAA notice. If, within 10 days after the date of registration, any reviewing agency provides a written objection to the export or reexport of a computer, License Exception CTP may not be used. In such cases, you will be notified that a license is required for the export or reexport. The NDAA notice will then be processed by BXA as a license application in accordance to the provisions described in § 750.4 of the EAR, and the licensing policies set forth in the Export Administration Regulations. Its NDAA notice number will be changed to a license application number. BXA may at this time request additional information to properly review the license application. If BXA confirms that no objection has been raised within the 10-day period (as described in paragraph (d)(4)(iv) of this section), you may proceed with the transaction on the eleventh day following date of registration. (Note that the fact that you have been advised to proceed with the transaction does not exempt you from other licensing requirements under the EAR, such as those based on knowledge of a prohibited end-use or end-user as referenced in general prohibition five (part 736 of the EAR) and set forth in part 744 of the EAR.)

(iv) *Status of pending advance notification requests.* You must contact BXA's System for Tracking Export License Applications (''STELA'') at (202) 482–2752. (See § 750.5 of the EAR for procedures to access information on STELA.) STELA will provide the date of registration of the NDAA notice. If no departments or agencies raise objections within the 10-day period, STELA will provide you on the eleventh day following date of registration with confirmation that no objections have been raised and you may proceed with the transaction. BXA will subsequently issue written confirmation to you. If a license is required, STELA will notify you that an objection has been raised and a license is required. The NDAA notice will be processed as a license application. In addition, BXA may provide notice of an objection by telephone, fax, courier service, or other means.

(v) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of computers with a CTP between 2,000 and 7,000 MTOPS to destinations in Computer Tier 3 under the NDAA. These reporting requirements also apply when you know that the items being exported will be used to enhance beyond 2,000 MTOPS the CTP of a previously exported or reexported computer. Such reports must be submitted in accordance with the provisions of this paragraph (d)(4)(v), and records of such exports subject to the post-shipment reporting requirements of this section, must be kept in accordance with part 762 of the EAR.

(A) *Information that must be included in each post-shipment report.* Within 30 days from date of export, the exporter must submit the following information to BXA at the address listed in paragraph (d)(4)(v)(B) of this section:

(*1*) Exporter name, address, and telephone number;

(*2*) NDAA notification number;

(*3*) Date of export;

(*4*) End-user name, point of contact, address, telephone number;

(*5*) Carrier;

(*6*) Air waybill or bill of lading number;

(*7*) Commodity description, quantities—listed by model numbers or serial numbers; and

(*8*) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

(B) *Mailing address and facsimile number.* A copy of the post-shipment report[s] required under paragraph (d)(4)(v)(A) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Attn: Tom Andrukonis, Director OES, Washington, D.C. 20044.

(2) For courier deliveries: Bureau of Export Administration, U.S. Department of Commerce, Attn: Tom Andrukonis, Director OES, Room 4065, 14th Street and Pennsylvania Ave., Washington, DC 20230.

(3) Facsimile: 202–482–0971.

* * * * *

(e) *Restrictions.*

* * * * *

(2) * * * Additionally, the end-use and end-user restrictions in paragraph (d)(3) of this section must be conveyed to any consignee in Computer Tier 3.

(f) Reporting requirements. In addition to the reporting requirements set forth in paragraph (d) of this section, see § 743.1 of the EAR for additional reporting requirements of certain items under License Exception CTP.

## PART 742—[AMENDED]

3. The authority citation for part 742 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 61 FR 42527, 3 CFR 1996 Comp., p. 298 (1997); Notice of August 13, 1997 (62 FR 43629, August 15, 1997); and P.L. 105–85, 111 Stat. 1629.

4. Section 742.12 is amended:

a. By adding paragraph (b)(3)(i)(C); and

b. By adding a new paragraph (b)(3)(iv), as follows:

### § 742.12 High performance computers.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(C) A license may be required to export or reexport computers with a CTP between 2,000 and 7,000 MTOPS to countries in Computer Tier 3 pursuant to the NDAA (see § 740.7(d)(4) of the EAR).

* * * * *

(iv) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of computers with a CTP in excess of 2,000 MTOPS to destinations in Computer Tier 3 under the NDAA. These reporting requirements also apply when you know that the items being exported will be used to enhance beyond 2,000 MTOPS the CTP of a previously exported or reexported computer. Such reports must be submitted in accordance with the provisions of this paragraph (b)(3)(iv), and records of such exports subject to the post-shipment reporting requirements of this section, must be kept in accordance with part 762 of the EAR.

(A) *Information that must be included in each post-shipment report.* Within 30 days from date of export, the exporter must submit the following information to BXA at the address listed in paragraph (b)(3)(iv)(B) of this section:

(*1*) Exporter name, address, and telephone number;

(*2*) License number;

(*3*) Date of export;

(*4*) End-user name, point of contact, address, telephone number;

(*5*) Carrier;

(*6*) Air waybill or bill of lading number;

(*7*) Commodity description, quantities—listed by model numbers or serial numbers; and

(*8*) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

(B) *Mailing address and facsimile number.* A copy of the post-shipment report[s] required under paragraph (b)(3)(vi)(A) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Attn: Tom Andrukonis, Director OES, Washington, D.C. 20044.

(2) For courier deliveries: Bureau of Export Administration, U.S. Department of Commerce Attn: Tom Andrukonis, Director OES, Room 4065, 14th Street and Pennsylvania Ave., Washington, DC 20230.

(3) Facsimile: 202–482–0971.

* * * * *

Dated: January 28, 1998.

**R. Roger Majak,**

*Assistant Secretary for Export Administration.*

[FR Doc. 98–2499 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–33–P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 388**

**[Docket No. RM97–8–000; Order No. 597]**

## Information and Requests

Issued January 28, 1998.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations governing information and requests to reflect the requirements and specifications of the Electronic Freedom of Information Act Amendments of 1996. This final rule also corrects minor editorial inconsistencies in the regulations.

**EFFECTIVE DATE:** March 5, 1998.

**ADDRESSES:** Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Beamon, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0780.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room, Room 2–A, 888 First Street, N.E., Washington, D.C. 20426. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, also provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. The full text of this document can be viewed, and saved, in ASCII format and an entire day's documents can be downloaded in WordPerfect 6.1 format by searching the miscellaneous file for the last seven days. CIPS also may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

## I. Introduction

This final rule amends 18 CFR Part 388 to implement the provisions of the Electronic Freedom of Information Act Amendments of 1996 (the Act). [1] The Act amended the Freedom of Information Act (FOIA) [2] by imposing a number of new requirements governing the public availability of information, including electronic information. This final rule also clarifies minor discrepancies in Part 388.

## II. Background

### *A. The Act*

The Act expands FOIA's definition of a record to include information maintained in electronic format; requires agencies to accommodate requesters' reasonable format preferences; and to conduct reasonable agency searches for electronic records.

The Act provides for the electronic availability of all ''public reading room'' materials created as of November 1, 1996.

The Act expands the scope of public reading room documents to include FOIA documents that are subject to repeated requests, a related index of such documents, and certain references and guides for accessing public information.

The Act increases the time for processing FOIA requests from 10 to 20 working days; allows extensions beyond the former 10-day deadline in limited circumstances; and gives requesters the opportunity to avoid extensions by limiting the scope of their requests.

The Act allows multitrack processing of FOIA requests (*i.e.,* simple requests are processed on a fast track, and complex requests are processed on slower tracks). The Act mandates expedited treatment for requesters who demonstrate an imminent threat to life or safety, and for journalists (and others engaged in dissemination of information) who demonstrate an urgency to inform the public concerning Federal Government activity.

### *B. Commission's Notice of Proposed Rulemaking*

On September 25, 1997, the Commission issued a notice of proposed rulemaking (NOPR) [3] to implement the provisions of the Act. The NOPR listed new categories of information for inclusion in the Public Reference Room, including applicable FOIA information, and the electronic availability of such information [§ 388.106]. The NOPR described procedures for multitrack processing and expedited processing, and specified the new time limit for processing FOIA requests [§ 388.108]. The NOPR described procedures for effecting an extension of time [§ 388.110], and made several minor grammatical and technical changes for the sake of clarity.

## III. Discussion

Only one party, the Missouri Basin Systems Group (MBSG), has submitted comments on the NOPR. MBSG seeks an expansion of the FOIA information that is electronically available under section 388.106 of the NOPR. In particular, MBSG seeks electronic access (and presumably Public Reference Room availability) for all FOIA documents ''cleared for release,'' dating back to the past two years. MBSG argues that ''immediate access'' would limit future FOIA requests for these documents. MBSG also opposes the new 20 working day deadline for processing FOIA requests under section 388.108.

MBSG's request for the availability of additional electronic FOIA information is not justified. Section 388.106(b)(21), which tracks the pertinent language of the Act,[4] already makes FOIA documents that ''are likely to be requested again'' available in the Public Reference Room, and by electronic means, if they were compiled on or after November 1, 1996. Making available those FOIA documents most likely to be requested again (as compared to all FOIA documents cleared for release) more efficiently balances the agency's resources with the public need. There is no basis for routinely making available large quantities of FOIA documents for which there is little or no continuing public demand. Moreover, in view of the statutory November 1, 1996 cutoff date, there is no justification for adopting the ''two year'' cutoff which MBSG proposes.

[1] Pub. L. No. 104–231, 110 Stat. 3048 (1996).

[2] 5 U.S.C. 552.

[3] Information and Requests, 62 FR 51610 (Oct. 2, 1997).

[4] 5 U.S.C. 552(a)(D), as amended.

Similarly, the Commission is not persuaded by MBSG's argument opposing the 20 working day time limit for processing an FOIA request. The new deadline was explicitly approved by Congress, which recognized that the former 10 working day deadline was unrealistic. Accordingly, the Commission adopts the 20-day deadline approved by Congress.

Although there were no other comments, the Commission is also revising the proposed language of § 388.106(a)(2) to make clear that only documents created by FERC on or after November 1, 1996 will immediately be electronically available, and those will only be available on the Commission's World Wide Web site and through the Bulletin Board Network. All public documents created or received by the Commission since November 1995 will be electronically available upon implementation of the Records and Information Management System (RIMS) on the Web.

The Commission adopts its NOPR as revised.

## IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[5] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The revisions improve the public's access to information, and impose additional obligations on the Commission to ensure the availability of such information. By comparison, the public's obligations would not significantly increase.

## V. Environmental Statement

Issuance of this final rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[6] This final rule falls within the regulatory exemption which specifies that information gathering, analysis, and dissemination are not major federal actions that have a significant effect on the human environment.[7] Thus, neither an environmental impact statement nor an environmental assessment is required.

## VI. Information Collection Statement

OMB regulations require that OMB approve certain information collection requirements imposed by agency rule.[8] This final rule contains no information reporting requirements, and is not subject to OMB approval.

## VII. Effective Date and Congressional Notification

This rule will be effective March 5, 1998. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[9] That reporting requirement does not apply to this final rule because this rule addresses agency organization, procedure and practice, and does not substantially affect the rights or obligations of non-agency parties.[10] Congressional notification of this final rule therefore is not required.

## List of Subjects in 18 CFR Part 388

Freedom of information, Public reference materials.

By the Commission.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

In consideration of the foregoing, the Commission amends part 388, chapter I, title 18, *Code of Federal Regulations,* as set forth below.

## PART 388—INFORMATION AND REQUESTS

1. The authority citation for part 388 is revised to read as follows:

**Authority:** 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

2. In § 388.106, paragraph (a) is redesignated as (a)(1); paragraph (a)(2) is added; paragraph (b) introductory text is revised; paragraph (b)(19) is redesignated as (b)(23); new paragraphs (b)(19) through (b)(22) are added; and paragraph (c)(1) is revised to read as follows:

### § 388.106 Requests for Commission records available in the Public Reference Room.

(a)(1) * * *

(2) Documents created by FERC on or after November 1, 1996, or earlier in some instances, also are electronically available on the Commission's World Wide Web site, (www.ferc.fed.us), and the Bulletin Board Network. All public documents created or received by the Commission since November 1995 will be electronically available upon implementation of the Records and Information Management System (RIMS) on the Web. These may be accessed in person using a personal computer in the Public Reference Room, or by using a personal computer with a modem at a remote location.

(b) The public records of the Commission that are available for inspection and copying upon request in the Public Reference Room, or are otherwise available under paragraph (a)(2) of this section, include:

* * * * *

(19) Statements of policy and interpretations which have been adopted by the Commission and are not published in the **Federal Register**;

(20) Administrative staff manuals and instructions to staff that affect a member of the public;

(21)(i) Copies of all records released under § 388.108, which, because of their nature and subject, the Director of the Office of External Affairs has determined are likely to be requested again, and

(ii) An index of the records so designated;

(22) Reference materials and guides for requesting Commission records as required by 5 U.S.C. § 552(g), as amended; and

* * * * *

(c) * * *

(1) *Commission correspondence* includes written communications and enclosures, in hard copy or electronic format, received from others outside the staff and intended for the Commission or sent to others outside the staff and signed by the Chairman, a Commissioner, the Secretary, the Executive Director, or other authorized official, except those which are personal.

* * * * *

### § 388.107 [Amended]

3. In § 388.107(a)(1), remove the word ''natural'' and add, in its place, the word ''national.''

4. In § 388.108, paragraphs (a)(1) introductory text, (a)(1)(iii), and (a)(2) through (a)(4) are revised; new paragraph (a)(5) is added; paragraphs(b) and (c) are redesignated as (c) and (e) respectively and revised, and new paragraphs (b) and (d) are added, to read as follows:

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[5] 5 U.S.C. 601–602.

[6] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. [Preambles 1986–90] ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR Part 380).

[7] 18 CFR 380.4(a)(5).

[8] 5 CFR Part 1320.

[9] Pub. L. No. 104–121, 110 Stat. 847 (1996), *codified at* 5 U.S.C. 801–808.

[10] 5 U.S.C. 804(3)(C).

**§ 388.108 Requests for Commission records not available through the Public Reference Room (FOIA requests).**

(a)(1) Except as provided in paragraph (a)(2) of this section, a person may request access to Commission records, including records maintained in electronic format, that are not available through the Public Reference Room, by using the following procedures:

* * * * *

(iii) The request must identify the fee category of the request, consistent with the provisions of § 388.109(b) (1) and (2).

(2) A request that fails to provide the identification required in paragraph (a)(1)(iii) of this section will not be processed until the Director, Office of External Affairs, can ascertain the requester's fee category.

(3) A request for records received by the Commission not addressed and marked as indicated in paragraph (a)(1)(i) of this section will be so addressed and marked by Commission personnel as soon as it is properly identified, and forwarded immediately to the Director, Office of External Affairs.

(4) Requests made pursuant to this section will be considered to be received upon actual receipt by the Director, Office of External Affairs, unless otherwise indicated in paragraph (a)(5) of this section.

(5) Except for the purpose of making a determination regarding expedited processing under paragraph (d)(3) of this section, no request will be deemed received while there is an unresolved fee waiver issue under § 388.109(b)(6), unless the requester has provided a written statement agreeing to pay some or all fees pending the outcome of the waiver question.

(b)(1) Multitrack processing. Upon receipt of a request, the Director, Office of External Affairs, will place the request in one of three tracks for processing:

(i) Track One—records that are readily identifiable and were previously cleared for release (including those subject to multiple requests and placed in the Public Reference Room);

(ii) Track Two—records that are readily identifiable, and require limited review; and

(iii) Track Three—complex and/or voluminous records requiring a significant search and/or review.

(2) Each track specified in paragraph (b)(1) of this section will be processed on a first in, first out basis, where practicable. A requester may modify a request to obtain processing on a faster track.

(c)(1) *Timing of response.* Except as provided in paragraphs (c)(4) and (d)(3) of this section, within 20 working days after receipt of the request for agency records, the Director, Office of External Affairs, will comply with the request or deny the request in whole or in part, and will notify the requester of the determination, of the reasons for a decision to withhold any part of a requested document, and of the right of the requester to appeal any adverse determination in writing to the General Counsel or General Counsel's designee.

(2) The Director, Office of External Affairs, will attempt to provide records in the form or format requested, where feasible, but will not provide more than one copy of any record to a requester.

(3) Any determination by the Director, Office of External Affairs, to withhold information will, where feasible, indicate the approximate volume of information withheld, and will indicate, for partially-released materials, where redactions have been made, unless to do so would harm an interest protected by a FOIA exemption.

(4) The time limit for the initial determination required by paragraph (c)(1) of this section may be extended as set forth in § 388.110(b).

(d)(1) *Expedited processing.* A requester may seek expedited processing on the basis of a compelling need. Expedited processing will be granted if the requester demonstrates that:

(i) Failure to obtain the records on an expedited basis can reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or

(ii) In the case of a requester primarily engaged in the dissemination of information, there is an urgency to inform the public concerning Federal Government activity.

(2) A request for expedited processing under this section must be supported with detailed credible documentation, including a statement certified to be true and correct to the requester's best knowledge and belief.

(3) The Director, Office of External Affairs, will decide within 10 calendar days of receipt of the request whether it is eligible for expedited processing. The Director will notify the requester of the reasons for denial of expedited processing and of the right of the requester to appeal to the General Counsel or General Counsel's designee.

(e) The procedure for appeal of denial of a request for Commission records, or denial of a request for expedited processing, is set forth in § 388.110.

5. In § 388.109, the first sentence of paragraph (b)(2)(iii), and paragraphs (b)(2)(iv), (b)(2)(vii), and (b)(5)(ii) are revised; paragraph (b)(5)(iii) is removed; paragraph (b)(6) is redesignated as paragraph (c) and revised, and paragraphs (b)(7) and (b)(8) (i) and (ii) are redesignated as (d) and (e) (1) and (2) respectively, to read as follows:

**§ 388.109 Fees for records requests.**

* * * * *

(b) * * *

(2) * * *

(iii) For a request not described in paragraphs (b)(2)(i) or (ii) of this section the Commission will charge the employee's hourly pay rate plus 16 percent for benefits for document search time and 15 cents per page for duplication. * * *

(iv) The Director, Office of External Affairs, will normally provide documents by regular mail, with postage prepaid by the Commission. However, the requester may authorize special delivery, such as express mail, at the requester's own expense.

* * * * *

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Commission reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, or otherwise reasonably believes that two or more requests constitute a single request, the Commission may aggregate any such requests and charge the requester accordingly. The Commission will not aggregate multiple requests on unrelated subjects from a requester. Aggregated requests may qualify for an extension of time under § 388.110(b).

* * * * *

(5) * * *

(ii) A requester has previously failed to pay a fee charged in a timely fashion. The Commission will require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Commission will begin to process a new request or a pending request from that requester. When the Commission requires advance payment or an agreement to pay under this paragraph, or under § 388.108(a)(5), the administrative time limits prescribed in this part will begin only after the Commission has received the required payments, or agreements.

(c) Fee reduction or waiver. (1) Any fee described in this section may be reduced or waived if the requester

demonstrates that disclosure of the information sought is:

(i) In the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Not primarily in the commercial interest of the requester.

(2) The Commission will consider the following criteria to determine the public interest standard:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information will contribute to public understanding; and

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or facilities.

(3) The Commission will consider the following criteria to determine the commercial interest of the requester:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) This request for fee reduction or waiver must accompany the initial request for records and will be decided under the same procedures used for record requests.

* * * * *

6. In § 388.110, the section heading, the first sentence of paragraph (a)(1), paragraph (a)(2), and paragraph (b) are revised to read as follows:

**§ 388.110 Procedure for appeal of denial of requests for Commission records not publicly available or not available through the Public Reference Room, denial of requests for fee waiver or reduction, and denial of requests for expedited processing.**

(a)(1) A person whose request for records, request for fee waiver or reduction, or request for expedited processing is denied in whole or part may appeal that determination to the General Counsel or General Counsel's designee within 45 days of the determination. * * *

(2) The General Counsel or the General Counsel's designee will make a determination with respect to any appeal within 20 working days after the receipt of such appeal. An appeal of the denial of expedited processing will be considered as expeditiously as possible within the 20 working day period. If, on appeal, the denial of the request for records, fee reduction, or expedited processing is upheld in whole or in part, the General Counsel or the General Counsel's designee will notify the person making the appeal of the provisions for judicial review of that determination.

(b)(1) *Extension of time.* In unusual circumstances, the time limits prescribed for making the initial determination pursuant to § 388.108 and for deciding an appeal pursuant to this section may be extended by up to 10 working days, by the Secretary, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

(2) The extension permitted by paragraph (b)(1) of this section may be made longer than 10 working days when the Commission notifies the requester within the initial response time that the request cannot be processed in the specified time, and the requester is provided an opportunity to limit the scope of the request to allow processing within 20 working days; or to arrange with the Commission an alternative time frame.

(3) Two or more requests aggregated into a single request under § 388.109(b)(2)(vii) may qualify for an extension of time if the requests, as aggregated, otherwise satisfy the unusual circumstances specified in this section.

(4) *Unusual circumstances* means:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the requests;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

**§ 388.112 [Amended]**

7. In § 388.112, paragraph(c)(1)(i)'s reference to ''paragraph (b)(2)'' is revised to read ''paragraph (b)(1)(ii),'' and paragraph (c)(1)(ii)'s reference to ''paragraph (b)(3)'' is revised to read ''paragraph (b)(1)(iii).''

[FR Doc. 98–2594 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD07 98–002]**

**RIN 2115–AE46**

## Special Local Regulations; Hillsborough Bay, Tampa, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special local regulations are being adopted for the Gasparilla Marine Parade. This event will be held on Saturday, February 7, 1998, between 10 a.m. and 1:30 p.m. Eastern Standard Time (EST) on Hillsborough Bay. These regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** These regulations become effective at 9 a.m. and terminate at 2:30 p.m. EST on February 7, 1998.

**FOR FURTHER INFORMATION CONTACT:** LTJG Bess Howard, Coast Guard Group, St. Petersburg, FL at (813) 824–7533.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

These regulations are needed to provide for the safety of life of spectators, to protect vessels participating in the parade, and to protect marine mammals during the Gasparilla Marine Parade on Hillsborough Bay on February 7, 1998. There will be approximately 750 participants in the marine parade. Also, 200–400 spectator craft are expected. The parade will begin at the mouth of the Seddon Channel and end at the mouth of the Hillsborough River. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication in the **Federal Register**. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received with sufficient time remaining to publish proposed rules in advance of the event or to provide for a delay effective date.

**Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, as these regulations will be in effect for less that six hours in a limited area of Hillsborough Bay.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities, because the regulations are in effect for only six hours in a limited part of Hillsborough Bay.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

The Coast Guard has considered the environmental impact of this action consistent with section 2.B.2 of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An Environmental Assessment and Finding of No Significant Impact have been prepared and are available in the docket for inspection or copying.

**List of Subject in 33 CFR Part 100**

Marine Safety, Navigation (water), Reporting and recordkeeping requirements. Waterways.

**Temporary Regulations**

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

## PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T–07–002 is added to read as follows:

**§ 100.35–T07–002 Special Local Regulations, Hillsborough Bay, Tampa, FL**

(a) *Regulated Area:* A regulated area is established in Hillsborough Bay, which consists of all waters east of a line drawn from Gadsen Point south to E. G. Simmons Park, at position 27–44.8 N, 082–28.3 W, then to the northern end of Hillsborough Bay. All coordinates referenced use Datum: NAD 83. Additionally, the regulated area includes the following, in their entirety: Hillsborough Cut ''D'' Channel, Sparkman Channel, Ybor Channel, Seddon Channel and the Hillsborough River south of the Cass Street Bridge.

(b) *Special Local Regulations:*

(1) Entry into the regulated area is closed to all commercial marine traffic from 10 a.m. to 2:30 p.m. EST on February 7, 1998.

(2) The regulated area is an idle speed, ''no wake'' zone.

(3) All vessels within the regulated area shall stay clear of and give way to all vessels in parade formation in the Gasparilla Marine Parade.

(4) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage.

(5) Jet skis and vessels without mechanical propulsion are prohibited from the parade route.

(6) Northbound vessels of length in excess of 80 feet and without mooring arrangements made prior to February 7, 1998, are prohibited from entering Seddon Channel, unless the vessel is officially entered in the Gasparilla Marine Parade. All northbound vessels, not officially entered in the Gasparilla Marine Parade, in excess of 80 feet without prior mooring arrangements must use the alternate route through Sparkman Channel.

(c) *Dates:* These regulations become effective at 9 a.m. and terminate at 2:30 p.m. EST on February 7, 1998.

Dated: January 21, 1998.

**R.C. Olsen, Jr.,**

*Captain, U.S. Coast Guard Commander, Seventh Coast Guard District Acting.*

[FR Doc. 98–2589 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD08–98–005]**

## Drawbridge Operation Regulation; Upper Mississippi River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Clinton Railroad Drawbridge, mile 518.0, Upper Mississippi River at Clinton, Iowa. This deviation allows the bridge to remain closed to navigation with requests for bridge openings made 24 hours in advance. Requests can be made by calling the Clinton Yardmaster's office at 319–244–3204 anytime; the bridge on weekdays from 7:00 a.m. to 3:30 p.m. at 319–244–3269; or during office hours at 630–876–2797. This closure is necessary to perform annual maintenance work.

**DATES:** The deviation is effective from December 12, 1997 until March 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, (314) 539–3900, extension 378.

**SUPPLEMENTARY INFORMATION:** The Clinton Railroad Drawbridge at Clinton, Iowa has a vertical clearance of 18.7 feet above normal pool in the closed to navigation position and 65.0 feet in the open position. Navigation on the waterway consists primarily of commercial tugs with tows.

The Union Pacific Railroad has requested a temporary deviation from the normal operation of the bridge for the annual maintenance of the bridge.

This deviation requires the draw of the Clinton Railroad Drawbridge to remain closed to navigation from December 12, 1997 until March 6, 1998 with a 24 hour advance notice for an opening. The drawbridge operation

regulations, when not amended by a deviation, require that the drawbridge is required to open on signal.

Dated: January 20, 1998.

**T.W. Josiah,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 98–2600 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD08–98–006]**

## Drawbridge Operation Regulation; Upper Mississippi River, U.S. Highways 136/218, IA/IL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Keokuk Drawbridge across the Upper Mississippi River at mile 364.0 at Keokuk, Iowa. This deviation allows the bridge to open upon receipt of 24 hours advance notice from Tuesday, December 30, 1997, through Saturday, February 28, 1998. This deviation is necessary to facilitate maintenance work on the bridge's mechanical and electrical systems.

**DATES:** The deviation is effective from December 30, 1997, through February 28, 1998.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, (314) 539–3900, extension 378.

**SUPPLEMENTARY INFORMATION:** Keokuk Drawbridge spans the downstream entrance to Lock 19. It provides a vertical clearance of 25.2 feet above the normal pool in the closed to navigation position. The bridge must open in order for commercial vessels to transit Lock 19. Lock 19 is closed for maintenance from January 5, 1998, until February 7, 1998. Locks 14, 15 and 25 are also closed to navigation for maintenance from December 15, 1997 until March 6, 1998. These lock closures curtail most commercial vessel activity on the Upper Mississippi River upstream from Lock 25, Mile 241.4. Local marine industries have stated they anticipate no problems with the deviation provided the bridge opens on receipt of 24 hours advance notice.

This deviation allows the draw of the Keokuk Drawbridge to remain closed to navigation from December 30, 1997 through February 28, 1998 with openings provided upon 24-hour advance notice. The drawbridge operation regulations, when not amended by a deviation, require that the drawbridge open on signal.

Dated: January 20, 1998.

**T. W. Josiah,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 98–2602 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD08–98–002]**

## Drawbridge Operation Regulation; Upper Mississippi River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Burlington Railroad Drawbridge at mile 403.1, across the Upper Mississippi River. This deviation amends the federal drawbridge operation regulations to require a six-hour advance notice to open for the period of 12:01 a.m., December 31, 1997 to 12:01 a.m., March 1, 1998. This action is necessary in order for the bridge to undergo required maintenance. Winter conditions on the Upper Mississippi River, coupled with the closure of many Corps of Engineers' locks until March of 1998, will preclude any significant navigation demands for bridge openings.

**DATES:** The deviation is effective from 12:01 a.m., December 31, 1997 to 12:01 a.m., March 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, (314) 539–2900, extension 378.

**SUPPLEMENTARY INFORMATION:** The Burlington Railroad Drawbridge swingspan has a vertical clearance of 21.5 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This change in drawbridge operation has been coordinated with the commercial waterway industry and fleeting operations in the area. Use of the waterway by these groups is curtailed during lock closures and ice formation in the winter months. The Burlington Railroad Drawbridge is located between Locks 18 and 19 which will be closed during the period. Performing maintenance on this bridge during the winter when no vessels are impacted is preferred to bridge closures or advance notification requirements during the commercial navigation season.

This deviation is for the period 12:01 a.m., December 31, 1997 to 12:01 a.m., March 1, 1998. It requires that six hour advance notice be made for the swingspan of the Burlington Railroad Drawbridge to open. The drawbridge operation regulations, when not amended by a deviation, require that the drawbridge open on-demand.

Dated: January 20, 1998.

**T.W. Josiah,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 98–2599 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD08–98–003]**

## Drawbridge Operation Regulation: Upper Mississippi River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Rock Island Railroad and Highway swing span drawbridge, Mile 482.9, Upper Mississippi River. This deviation allows the drawbridge to remain closed to navigation from 8 a.m. on December 31, 1997 until 8 a.m. on February 28, 1998. This action is necessary in order to perform annual maintenance and repair work on the bridge.

**DATES:** The deviation is effective from 8 a.m. on December 31, 1997 until 8 a.m. on February 28, 1998.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, (314) 539–3900, extension 378.

**SUPPLEMENTARY INFORMATION:** The Rock Island Railroad and Highway Drawbridge has a vertical clearance of

23.8 feet above normal pool in the closed to navigation position and 110.0 feet in the open to navigation position. Navigation on the waterway consists primarily of commercial tugs with tows. The U.S. Department of the Army, Rock Island Arsenal, has requested a temporary deviation from the normal operation of the bridge so that annual maintenance and repairs can be performed.

This deviation is for the period 8:00 a.m. on December 31, 1997 until 8:00 a.m. on February 28, 1998. It requires that the draw of the Rock Island Railroad and Highway Drawbridge remain closed to navigation. The drawbridge operation regulations, when not amended by a deviation, require that the drawbridge open on signal.

Dated: January 20, 1998.

**T.W. Josiah,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 98–2598 Filed 2–2–98; 8:45 am]

**BILLING CODE 4910–14–M**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD08–98–004]**

## Drawbridge Operation Regulation; Black River, Canadian Pacific Railway, Soo District, WI

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Chicago Milwaukee and St. Paul Railroad Drawbridge swing span drawbridge across the Black River at mile 1.0 at LaCrosse, Wisconsin. This deviation allows the bridge to remain closed to navigation from Tuesday, January 6, 1998, through Thursday, February 5, 1998. This closure is necessary to facilitate removal and rebuilding of mechanical devices to avoid problems during the next navigation season.

**DATES:** The deviation is effective from Tuesday, January 6, 1998, through Thursday, February 5, 1998.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, (314) 539–3900, extension 378.

**SUPPLEMENTARY INFORMATION:** The Chicago Milwaukee and St. Paul Railroad Drawbridge has a vertical clearance of 16.9 feet above normal pool in the closed-to-navigation position. All locks in the U.S. Army Corps of Engineers St. Paul District have been closed for the winter and this has greatly reduced the amount of commercial navigation in the LaCrosse area. Local marine industry have stated that they anticipate no problems with the closure.

This deviation requires that the Chicago Milwaukee and St. Paul Railroad Drawbridge remain closed to navigation from January 6, 1998 through February 5, 1998. The drawbridge operation regulations, when not amended by a deviation, require that the drawbridge open on signal if at least two hours notice is given.

Dated: January 20, 1998.

**T. W. Josiah,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 98–2603 Filed 2–2–98; 8:45 am]

**BILLING CODE 4910–14–M**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 160

**[CGD 97–067]**

**RIN 2115–AF54**

## Advance Notice of Arrival: Vessels Bound for Ports and Places in the United States

**AGENCY:** Coast Guard, DOT.

**ACTION:** Correction to interim rule.

**SUMMARY:** This document contains corrections to the interim rule [CGD 97–067], which was published on December 11, 1997 (62 FR 65203). The rule requires certain vessels to notify us of their International Safety Management (ISM) Code certification status when they enter U.S. waters and ports. The rule requires these vessels to include their ISM Code status in the notice of arrival messages that are routinely sent to the Coast Guard Captain of the Port.

This document replaces the phrases ''12 or more passengers'' and ''12 passengers or more'', with the correct phrase ''more than 12 passengers''.

**DATES:** Effective on February 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1053, or fax (202) 267–4570.

**SUPPLEMENTARY INFORMATION:**

### Need for Correction

As published, the IR contains typographical errors which resulted in using the phrases ''12 or more passengers'' and ''12 passengers or more'', instead of the correct phrase ''more than 12 passengers''.

### Correction of Publication

Accordingly, the publication on December 11, 1997, of the interim rule [97–067], which was the subject of FR Doc. 97–32447, is corrected as follows:

1. On page 65204, in the third column, in the fourth complete paragraph which begins with the words, ''This rule will require these vessels * * *, remove the words ''12 passengers or more'' and add, in their place, the words ''more than 12 passengers''.

2. On page 65206, in the third column, in § 160.207, paragraph (d)(1), remove the words ''12 or more passengers'', and add, in their place, the words ''more than 12 passengers''.

Dated: January 28, 1998.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 98–2601 Filed 2–2–98; 8:45 am]

**BILLING CODE 4910–14–M**

## POSTAL SERVICE

## 39 CFR Part 20

## Global Priority Mail

**AGENCY:** Postal Service.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule sets forth the International Mail Manual (IMM) regulations and rates pertaining to a new Global Priority Mail preprinted flat-rate box.

**DATES:** Effective February 3, 1998. Comments must be received on or before April 6, 1998.

**ADDRESSES:** Written comments should be mailed or delivered to the Manager, Expedited Products Group, International Business Unit, U.S. Postal Service, Room 370–IBU, 475 L'Enfant Plaza SW, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jay Thabet, (202) 268–2269.

**SUPPLEMENTARY INFORMATION:** Global Priority Mail is an expedited airmail

letter service providing fast, reliable, and economical delivery of all items mailable as letters or merchandise up to 4 pounds. Global Priority Mail items receive priority handling in the United States and destination countries. Service is limited to the 34 destination countries identified in IMM 226.2. Service is available from designated post offices identified in IMM 226.32.

The weight limit for Global Priority Mail items is 4 pounds. The Postal Service offers two sizes of preprinted flat-rate envelopes. The rates for these envelopes are based on a geographic rate zone regardless of the actual weight. Although these envelopes are valid for weights of up to 4 pounds, the practical limitations of the envelopes limit the weight to less than 4 pounds. There also are weight-based rates for use when customers use their own packaging materials. There also are volume rates associated with this option when customers mail five or more of the variable weight option items at a time.

Recognizing the customer need for convenient packaging, the Postal Service is introducing a preprinted Global Priority Mail flat-rate box for weights of up to 4 pounds. Like the preprinted flat-rate envelopes, the rates for this box are based on geographic rate zones regardless of the actual weight. The maximum weight allowable remains at 4 pounds

The rates are:

GLOBAL PRIORITY MAIL FLAT RATE BOX RATES

| Destination | Postage |
|---|---|
| Western Europe | $22 |
| North America | 22 |
| South America | 22 |
| Middle East | 22 |
| Pacific Rim | 30 |

Weight limit 4 lbs.

There are also Global Priority Mail flat-rate box volume rates, for customers mailing 10 or more pieces in one mailing. Refer to IMM 226.45.

The rates are as follows:

GLOBAL PRIORITY MAIL, FLAT-RATE BOX VOLUME RATES

| Geographic region | (10–14 pieces) | (15–19 pieces) | (20 or more (pieces) |
|---|---|---|---|
| Western Europe | $19.50 | $18.50 | $17.50 |
| North America | 19.50 | 18.50 | 17.50 |
| South America | 19.50 | 18.50 | 17.50 |
| Middle East | 19.50 | 18.50 | 17.50 |
| Pacific Rim | 27.00 | 25.50 | 24.00 |

Weight limit 4 lbs.

Accordingly, the Postal Service hereby adopts the following regulations on an interim basis. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested parties to submit written data, views, or comments concerning the interim regulations.

The Postal Service adopts the following amendments to the IMM, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

**Lists of Subjects in 39 CFR Part 20**

International postal service, Foreign relations.

## PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Effective February 3, 1998, section 226 of IMM issue 19 is amended as follows:

* * * * *

2 CONDITIONS FOR MAILING

* * * * *

### 226 Global Priority Mail

* * * * *

### 226.12 Permissible Items

All items sent as letter-class mail (see 221.1) are accepted in Global Priority Mail, provided that the contents are mailable and fit securely in the envelope or box. Global Priority Mail items may contain dutiable merchandise unless the country of destination specifically prohibits dutiable merchandise in letters (see 224.51). Any item that is prohibited in international mail is prohibited in Global Priority Mail. Refer to the ''Country Conditions of Mailing'' in the Individual Country Listings for individual country prohibitions.

### 226.13 Packaging

Items must fit comfortably within the envelope or box without distorting or bursting the container. Do not use excessive tape to keep the envelope or box from bursting. Use only one piece of tape to secure the flap.

* * * * *

### 226.4 Postage

* * * * *

### 226.44 Global Priority Mail, Flat-Rate Box

Each Global Priority Mail flat-rate box is charged at a flat rate. The rate is based on the geographic rate zone regardless of its actual weight. Postage is required for each piece (See Exhibit 226.44).

EXHIBIT 226.44.—GLOBAL PRIORITY MAIL, FLAT-RATE BOX RATES

| Destination | Postage |
|---|---|
| Western Europe | $22 |
| North America | 22 |
| South America | 22 |
| Middle East | 22 |
| Pacific Rim | 30 |

Weight limit 4 lbs.

### 226.45 Global Priority Mail, Flat-Rate Box Volume Rate

### 226.451 Minimum Quantity Requirements

The mailer must have a minimum of 10 or more pieces to one or more Global Priority Mail countries. The minimum does not apply to each geographic rate zone (See Exhibit 226.45).

### 226.452 Mailing Statement

Postage for volume rate mail and permit imprint must be computed on Form 3653, Global Priority Mail Statement of Mailings.

EXHIBIT 226.45.—GLOBAL PRIORITY MAIL, FLAT-RATE BOX VOLUME RATES

| Geographic region | (10–14 pieces) | (15–19 pieces) | (20 or more (pieces) |
|---|---|---|---|
| Western Europe | $19.50 | $18.50 | $17.50 |
| North America | 19.50 | 18.50 | 17.50 |
| South America | 19.50 | 18.50 | 17.50 |
| Middle East | 19.50 | 18.50 | 17.50 |
| Pacific Rim | 27.00 | 25.50 | 24.00 |

Weight limit 4 lbs.

* * * * *

**226.62 Marking**

Global Priority Mail items must be mailed in special envelopes (EP–15A, EP–15B), a flat rate box (01099X), or with the Global Priority Mail sticker (DEC–10) provided by the Postal Service. (These supplies may be obtained by calling 800–222–1811). Unmarked pieces are subject to the applicable LC/AO airmail regular rates and treatment. Pieces paid at the Global Priority Mail sticker rate must have the DEC–10 sticker affixed to the address side of the package.

* * * * *

**226.7 Size and Weight Limits**

**226.71 Size Limits**

* * * * *

**226.714 Global Priority Mail, Flat Rate Box**

The dimensions of the Global Priority Mail 4 pound box are: 12$\frac{5}{16}$x9$\frac{1}{4}$x2 inches.

**226.72 Weight Limit**

Items sent as Global Priority Mail in envelopes or boxes, or using the variable weight option, must not exceed 4 pounds.

* * * * *

**226.8 Mailer Preparation**

* * * * *

**226.82 Deposit of Mail**

Global Priority Mail single-piece variable weight option pieces, Global Priority Mail flat-rate envelopes and Global Priority Mail flat-rate boxes with postage affixed may be deposited wherever Express Mail is accepted. These include: post office windows, handed to a letter carrier, placed in an Express Mail street collection box (only if less than 1 pound) or by calling 1–800 222–1811 for pickup. Global Priority Mail pieces paid by permit imprint and pieces mailed at the Global Priority Mail volume rates must be deposited at a business mail acceptance unit as authorized by the postmaster in the designated Global Priority Mail sites for acceptance. Metered mail must be deposited in locations under the jurisdiction of the licensing post office except as permitted under Domestic Mail Manual (DMM) P030.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 98–2527 Filed 2–2–98; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[WI75–01–7304; FRL–5958–7]**

### Approval and Promulgation of Implementation Plan; Wisconsin

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The United States Environmental Protection Agency (USEPA) proposed to approve Wisconsin's request to grant an exemption for the Milwaukee severe and Manitowoc County moderate ozone nonattainment areas from the applicable Oxides of Nitrogen (NOx) transportation conformity requirements on June 12, 1997. The proposal was based on information the Wisconsin Department of Natural Resource (WDNR) submitted to the EPA as a State Implementation Plan (SIP) revision request for an exemption under section 182(b)(1) of the Clean Air Act (Act). The request was based on the urban airshed modeling (UAM) conducted for the attainment demonstration for the Lake Michigan Ozone Study (LMOS) modeling domain. The EPA is temporarily granting this exemption until a control strategy SIP is approved.

**DATES:** This rule will be effective April 6, 1998.

**ADDRESSES:** Copies of the SIP revision, public comments and EPA's responses are available for inspection at the following address:

Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

A copy of this SIP revision is available for inspection at the following location:

Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7548.

**FOR FURTHER INFORMATION CONTACT:** Michael G. Leslie, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Clean Air Act section 176(c)(3)(A)(iii) requires, in order to demonstrate conformity with the applicable SIP, that transportation plans and Transportation Improvement Programs (TIPs) contribute to emissions reductions in ozone and carbon monoxide nonattainment areas during the period before control strategy SIPs are approved by USEPA. This requirement is implemented in 40 CFR 51.436 through 51.440 (and § § 93.122 through 93.124), which establishes the so-called ''build/no-build test.'' This test requires a demonstration that the ''Action'' scenario (representing the implementation of the proposed transportation plan/TIP) will result in lower motor vehicle emissions than the ''Baseline'' scenario (representing the implementation of the current transportation plan/TIP). In addition, the ''Action'' scenario must result in emissions lower than 1990 levels.

The November 24, 1993, final transportation conformity rule [1] does not require the build/no-build test and less-

[1] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act'' November 24, 1993 (58 FR 62188).

than–1990 test for NOx as an ozone precursor in ozone nonattainment areas, where the Administrator determines that additional reductions of NOx would not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. Clean Air Act section 176(c)(3)(A)(iii), which is the conformity provision requiring contributions to emission reductions before SIPs with emissions budgets can be approved, specifically references Clean Air Act section 182(b)(1). That section requires submission of State plans that, among other things, provide for specific annual reductions of volatile organic compounds (VOCs) and NOx emissions ''as necessary'' to attain the ozone standard by the applicable attainment date. Section 182(b)(1) further states that its requirements do not apply in the case of NOx for those ozone nonattainment areas for which USEPA determines that additional reductions of NOx would not contribute to ozone attainment.

For ozone nonattainment areas, the process for submitting waiver requests and the criteria used to evaluate them are explained in the December 1993 USEPA document ''Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f),'' and the May 27, 1994, and February 8, 1995, memoranda from John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Regional Air Division Directors, titled ''Section 182(f) NOx Exemptions—Revised Process and Criteria.''

On July 13, 1994, the States of Illinois, Indiana, Michigan, and Wisconsin (the States) submitted to the USEPA a petition for an exemption from the requirements of section 182(f) of the Clean Air Act (Act). The States, acting through the Lake Michigan Air Directors Consortium (LADCo), petitioned for an exemption from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major stationary sources of NOx. The petition also asked for an exemption from the transportation and general conformity requirements for NOx in all ozone nonattainment areas in the Region.

On March 6, 1995, the USEPA published a rulemaking proposing approval of the NOx exemption petition for the RACT, NSR and transportation and general conformity requirements. A number of comments were received on the proposal. Several commenters argued that NOx exemptions are provided for in two separate parts of the Act, in sections 182(b)(1) and 182(f), but that the Act's transportation conformity provisions in section 176(c)(3) explicitly reference section 182(b)(1). In April 1995, the USEPA entered into an agreement to change the procedural mechanism through which a NOx exemption from transportation conformity would be granted (*EDF et al.* v. *USEPA*, No. 94–1044, U.S. Court of Appeals, D.C. Circuit). Instead of a petition under section 182(f), transportation conformity NOx exemptions for ozone nonattainment areas that are subject to section 182(b)(1) now need to be submitted as a SIP revision request. The Milwaukee and the Manitowoc ozone nonattainment areas are classified as moderate or above and, thus, are subject to section 182(b)(1).

The transportation conformity requirements are found at sections 176(c)(2), (3), and (4). The conformity requirements apply on an areawide basis in all nonattainment and maintenance areas. The USEPA's transportation conformity rule was amended on August 29, 1995 (60 FR 44762) to reference section 182(b)(1) rather than section 182(f) as the means for exempting areas subject to section 182(b)(1) from the transportation conformity NOx requirements.

The July 10, 1996, SIP revision request from Wisconsin was submitted to meet the requirements in accordance with section 182(b)(1). Public hearings on this SIP revision request were held on January 11 and 12, 1995.

In evaluating the section 182(b) SIP revision request, the USEPA considered whether additional NOx reductions would contribute to attainment of the standard in Milwaukee severe and Manitowoc County moderate ozone nonattainment areas and also in the downwind areas of the LMOS modeling domain.

As outlined in relevant USEPA guidance, the use of photochemical grid modeling is the recommended approach for testing the contribution of NOx emission reductions to attainment of the ozone standard. This approach simulates conditions over the modeling domain that may be expected at the attainment deadline for three emission reduction scenarios: (1) Substantial VOC reductions; (2) substantial NOx reductions; and (3) both VOC and NOx reductions. If the areawide predicted maximum one-hour ozone concentration for each day modeled under scenario (1) is less than or equal to those from scenarios (2) and (3) for the corresponding days, the test is passed and the section 182(f) NOx emissions reduction requirements would not apply.

In making this determination under section 182(b)(1) that the NOx requirements do not apply, or may be limited in the Lake Michigan area, the USEPA has considered the National study of ozone precursors completed pursuant to section 185B of the Act. The USEPA has based its decision on the demonstration and the supporting information provided in the SIP revision request.

## II. Public Comments

On June 12, 1997, the EPA proposed approval of the Wisconsin request to grant an exemption for the Milwaukee severe and Manitowoc County moderate ozone nonattainment areas from the applicable Oxides of Nitrogen (NOx) transportation conformity requirements. The EPA received five sets of comments during the public comment period which ended on July 14, 1997. Four of the comments where in favor of the EPA proposal, and one set was critical of the proposal.

*Comment:* Wisconsin has failed to establish a NOx budget for these ozone nonattainment areas. Wisconsin has yet to develop and submit such budgets as required by November 1994. Until these attainment demonstrations, encompassing verifiable and allocated (biogenic, point, mobile, and area) NOx emission budgets, are submitted and complete, any determination that required control strategies are not necessary is premature and unfounded.

*Response:* The EPA acknowledges that the State has not submitted the attainment demonstration as required, but EPA can process this SIP revision without an attainment demonstration. As described in the proposal, EPA is issuing this waiver on a temporary basis while more detail modeling information is being developed and submitted.

*Comment:* The Wisconsin submittal failed to demonstrate that low-level NOx reductions in the Milwaukee and Manitowoc nonattainment areas would not improve air quality. While the submittal did analyze domain-wide low level NOx reductions, no such analysis was performed for the specific Wisconsin counties. The State of Wisconsin in coordination with LADCo, has the capabilities to model NOx emissions from mobile sources in these counties. The EPA should require such a demonstration before taking final action on this rulemaking.

*Response:* The LADCo analysis demonstrated that across the board reductions in NOx from point, area, and mobile sources would not improve air quality in the modeling domain. Further, LADCo performed an analysis which focused on NOx reductions from point sources. This analysis showed a small increase in ozone formation. From

this result LADCo concluded that low level NOx controls, i.e. mobile and area sources, would be detrimental to air quality in the modeling domain. The EPA accepts these conclusions.

*Comment:* The Wisconsin submittal failed to incorporate the LADCo ''Episode 4'' analysis. This episode represents meteorological conditions with predominately east-to-west transport patterns. These types of episodes will be important when assessing the revised NAAQS eight hour exposure in Eastern Wisconsin. Areas such as Fox Valley and Dane County, Wisconsin have already recorded eight hour average ozone levels greater than 80 ppb.

*Response:* The EPA disagrees that Episode 4 was not incorporated into Wisconsin's NOx waiver submittal. The August 22, 1994, EPA technical review and the LADCo July 13, 1994, technical support document for the NOx exemption modeling analysis clearly detail that Episode 4 is included in the NOx waiver submittal. This episode predicted that the highest domain-wide peak ozone concentrations occur under the NOx-only reduction case. The modeling demonstration also showed that NOx reductions are too limited to contribute to attainment of the ozone standard.

*Comment:* Michigan Counties now in violation of the ozone NAAQS will benefit from low-level NOx emissions reductions.

*Response:* Weather conditions which typically produce high levels of ozone in the western Michigan area feature winds generally from the south to southwest. NOx controls in Wisconsin have a minimal affect on air quality in western Michigan during these high ozone episodes. The LADCO modeling demonstrates that air quality benefits in western Michigan occur primarily as a result of NOx controls in Illinois and Indiana.

*Comment:* The EPA has failed to adequately consider the benefits of NOx emissions reductions in the Milwaukee and Manitowoc nonattainment areas.

*Response:* As stated above, the LADCo analysis demonstrated that across-the-board reductions in NOx from point, area, and mobile sources would not improve air quality in the modeling domain. Further, LADCo performed an analysis which focused on NOx reductions from point sources. This analysis showed a small increase in ozone formation. From this result LADCo concluded that low level NOx controls, i.e. mobile and area sources, would be detrimental to air quality in the modeling domain. The EPA accepts these conclusions.

*Comment:* The EPA and Wisconsin failed to perform the appropriate environmental justice analysis. The EPA has failed to consider the spatial impact of where reductions could be anticipated and where increases might occur with and without NOx conformity requirements in Wisconsin.

*Response:* As discussed in the July 14, 1997, proposed approval, the role that NOx emissions play in producing ozone at any given place and time is complex. NOx primarily represents a sum of two oxides of nitrogen, namely nitrogen oxide (NO) and nitrogen dioxide ($NO_2$). In the presence of sunlight, $NO_2$ photo-dissociates into NO and a single oxygen atom. The oxygen atom reacts with molecular oxygen ($O_2$) to form ozone ($O_3$). NO, on the other hand, near its source area readily reacts with ozone to form $O_2$ and $NO_2$. The generated $NO_2$ is then free to photo-dissociate and lead to ozone formation further downwind. The reaction of NO with ozone, which locally reduces ozone concentrations, is referred to as ozone scavenging and is one of the primary local sinks for ozone in the lower atmosphere in and near NO source areas. Since emissions of NOx from fuel combustion sources, whether internal combustion engines or stationary combustion sources, such as industrial boilers, contain significant amounts of NO, it is expected that ozone concentrations immediately downwind of such NOx sources will be reduced through ozone scavenging. Therefore, reducing NOx emissions can lead to increased ozone concentrations in the vicinity of the controlled NOx emission sources, whereas reducing NOx emissions may lead to reduction in ozone concentrations further downwind. Reducing NOx emissions in VOC-limited areas (areas with low VOC emissions relative to NOx emissions) may produce minimal ozone reductions or even ozone increases. This pattern of NOx scavenging is demonstrated in the LADCo modeling. Therefore, controlling low level NOx in Milwaukee area could in fact increase ozone concentrations in local areas.

*Comment:* The Wisconsin request utilizes the BEIS-I inventory for biogenics emissions. The Ozone Transport Assessment Group (OTAG) concluded that the BEIS-II inventory is the preferred inventory for UAM analyses.

*Response:* The BEIS-I was the approved and most appropriate biogenic emissions inventory available to LADCo when the NOx model analysis was performed. Any subsequent modeling performed by LADCo will utilize the BEIS-II biogenic emissions inventory.

*Comment:* OTAG concluded, with Wisconsin's concurrence, that both elevated and low level NOx reductions are effective in reducing ozone levels. These conclusions were based extensively on OTAG modeling, and are significant and relevant to EPA's action on this rule. The modeling clearly demonstrated the efficacy of reducing low-level (mobile source) NOx in controlling ozone. The conclusions of the policy group were that such reductions were cost effective, and beneficial to reduce transport to downwind areas.

*Response:* While EPA agrees in a general sense that OTAG recommended NOx reductions from all source categories will reduce the transport of ozone, it should be noted that OTAG concluded that States must have the opportunity to conduct additional local and subregional modeling to assess appropriateness, type, and timing of controls. OTAG further concludes that States can work together, in coordination with EPA, toward completing local SIPs including an evaluation of possible local NOx disbenefits. The EPA believes that the specific modeling done by LADCo should override OTAG's general findings as it pertains to NOx disbenefits.

*Comment:* The OTAG concluded that ''disbenefit'' analyses found ozone increases to be less frequent and severe than EPA concluded based on the July 13, 1994, LADCo section 182(f) NOx waiver submittal, on which the Wisconsin transportation conformity waiver is based.

*Response:* The OTAG-fine grid analysis utilized a 12 km grid as compared to the LADCo fine grid of 4 km. This disparity in fine-grid size de-emphasizes the NOx disbenefit at the local urbanized area. OTAG concluded that some areas will experience local NOx disbenefits at more frequent pronounced levels. The EPA believes that the LADCO fine-grid analysis is more relevant than the waiver determination.

*Comment:* In previous rulemakings on similar NOx waiver requests, EPA committed to incorporate the OTAG findings in ''future'' EPA rulemakings. The OTAG has completed its analyses, and the EPA proposed approval of Wisconsin's section 182(b) waiver is in direct conflict with the OTAG's findings and EPA's commitment to utilize those findings.

*Response:* The summary of the OTAG finding states that NOx reductions decrease and increase ozone; decreases occur domain wide, increases are confined to a few days in a few urban

areas. These local increases are due mostly to low level urban NOx reductions. These findings are consistent with the LADCo analysis for this waiver.

The EPA's recently signed proposed regional NOx rulemaking uses the OTAG findings to identify States which contribute significantly to ozone problem areas in other States. In addition, the proposed rulemaking establishes State-wide NOx budgets for the year 2007.

A section of the rulemaking also solicits comments on approaches that can be used to address the disbenefit issue in areas such as Lake Michigan. Subsequent modeling by the LADCo States will need to address the disbenefit issue as it pertains to the NOx budget, ozone transport, and attainment.

## III. EPA Action

In this final action, EPA is approving the transportation conformity NOx waiver SIP revision for the State of Wisconsin. In light of the modeling completed thus far and considering the importance of the Ozone Transport Assessment Group (OTAG) process and attainment plan modeling efforts, EPA notes that it may reexamine the impact of this NOx waiver. In the near future, EPA intends to require appropriate States to submit SIP measures to achieve emissions reductions of ozone precursors needed to prevent significant transport of ozone. The EPA will evaluate Wisconsin's submitted SIP measures and available refined modeling to determine whether the NOx waiver should remain in place, or whether EPA will require a new plan revision.

The EPA also reserves the right to require NOx emission controls for transportation sources under section 110(a)(2)(D) of the Act if future ozone modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas.

## IV. Miscellaneous

### *A. Applicability to Future SIP Decisions*

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

### *B. Executive Order (E.O.) 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

### *C. Regulatory Flexibility*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *D. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

### *E. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2)

### *F. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Oxides of Nitrogen, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: January 22, 1998.

**David A. Ullrich,**

*Acting Regional Administrator, Region V.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C 7401 *et seq.*

## Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (m) to read as follows:

**§ 52.2585 Control strategy: Ozone.**

* * * * *

(m) Approval—On July 10, 1996, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a request to waive the Oxide of Nitrogen requirements for transportation conformity in the Milwaukee and Manitowoc ozone nonattainment areas.

[FR Doc. 98–2616 Filed 2–2–98; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 91–283; RM–7807, RM–8772]**

### Radio Broadcasting Services; George West, and Corpus Christi, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of G & W Radio, allots Channel 228C3 to George West, Texas, as the community's second local FM service. *See* 56 FR 50843, October 9, 1991. The Commission also denies a counterproposal (RM–8772) filed by Reina Broadcasting, Inc. requesting the substitution of Channel 234C2 for Channel 234C3 at Corpus Christi, Texas, since Reina failed to provide the express agreement of Four M.L. Broadcasting (applicant for Channel 281A at George West) to upgrade and open a new filing window for Channel 281C3 at George West. Channel 228C3 can be allotted to George West in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 kilometers (7.5 miles) southwest to avoid a short-spacing to vacant Channel 281A, George West, Texas. The coordinates for Channel 228C3 are 28–15–46 and 98–12–24. Mexican concurrence for this allotment has been received since George West is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

With this action, this proceeding is terminated.

**EFFECTIVE DATE:** March 2, 1998. The filing for Channel 228C3 at George West, Texas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 91–283, adopted January 7, 1998, and released January 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio Broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

### Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334,336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 228C3 at George West.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98–1892 Filed 2–2–98; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Part 192

**[Docket PS–118A; Amendment 192–82]**

**RIN 2137–AC55**

### Excess Flow Valve—Customer Notification

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule requires operators of natural gas distribution systems to provide certain customers with information about excess flow valves (EFV's). Specifically, customers of new and replaced single residence service lines must be provided written notification about the availability of these valves meeting DOT-prescribed performance standards, and related safety benefits and costs. If a customer requests installation, the rule requires an operator to install the EFV if the customer pays all costs associated with installation. EFVs restrict the flow of gas by closing automatically if a service line breaks, thus, mitigating the consequences of service line failures. This regulation would enhance public awareness of the potential safety benefits from installing an EFV.

**DATES:** This final rule takes effect February 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mike M. Israni, telephone (202) 366–4571, or e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this final rule, or the Dockets Unit (202) 366–4453 for copies of this final rule or other material in the docket referenced in this rule.

**SUPPLEMENTARY INFORMATION:**

**Background**

During routine excavation activities, excavators often sever gas service lines causing loss of life, injury, or property damage by fire or explosion. EFVs restrict the flow of gas by closing automatically if a service line breaks, and mitigate the consequences of service line failures. Despite efforts, such as damage prevention programs, to reduce the frequency of excavation-related service line incidents on natural gas service lines, such incidents persist and result in death, injury, fire, or explosion. Because damage prevention measures are not foolproof, RSPA has sought an appropriate means to mitigate the consequences of these incidents. The National Transportation Safety Board (NTSB) and others have recommended EFVs to mitigate the consequences of such incidents, thus, saving lives and lessening the extent of property damage.

By having an operator inform its customers of the availability of EFVs for installation at a cost and the resultant safety benefits, customers can decide if they want the operator to install an EFV on the service line. Notification giving information on EFVs may encourage EFV use and, by encouraging such use, may lead to reduced fatalities, injuries, and property damage that can result from excavation-related incidents on gas service lines.

**Statutory Requirement**

In 49 U.S.C. 60110 Congress directed the Department of Transportation (DOT) to issue regulations requiring operators to notify customers in writing about EFV availability, the safety benefits derived from installation, and costs associated with installation, maintenance, and replacement. The regulations were to provide that, except where installation is already required, if the customer requests installation, an operator must install an EFV that meets

prescribed performance criteria, if the customer pays all costs associated with installation.

Before DOT prescribed notification regulations, the statute required DOT to issue regulations prescribing the circumstances where operators of natural gas distribution systems must install EFVs, unless DOT determined that there were no circumstances under which EFVs should be installed.

RSPA is the administration within DOT responsible for implementing laws addressing pipeline safety.

RSPA published a notice of proposed rulemaking (NPRM) (Notice 2; 58 FR 21524; April 21, 1993) (''Excess Flow Valve Installation on Service Lines''), proposing to require that EFVs be installed on single-residence gas service lines. During the rulemaking process we reviewed technical information, sought advice from state safety representatives, and analyzed available operational data. RSPA determined, primarily for cost reasons, that there were no circumstances where RSPA should require EFV installation. As required by the statute, RSPA reported this determination to Congress on April 4, 1995. A copy of this report is available in the docket. As further required by 49 U.S.C. § 60110, we developed performance standards for EFVs (industry standards were not then available) to ensure that an EFV installed in a single-residence gas service line operates reliably and safely. These performance standards were published as a final rule [61 FR 31449; June 20, 1996].

**AGA Petition and Pre-NPRM Meetings**

The American Gas Association (AGA) submitted a petition for a rulemaking on EFV customer notification in which it identified several issues it believed we should discuss in a notification rule. RSPA considered AGA's petition (on file in the docket) in developing the notice of proposed rulemaking. To gain further information before developing a proposed notification rule, RSPA met with representatives of AGA, the American Public Gas Association (APGA), NTSB and the Gas Safety Action Council (GASAC) on August 2 and September 6, 1995. We discussed AGA's petition and these meetings in the NPRM.

**NPRM**

RSPA published an NPRM (61 FR 33476; June 27, 1996), proposing requirements for excess flow valve customer notification. The comment period closed August 26, 1996. Commenters included industry associations, local distribution companies, consultants, city and state agencies, and a federal safety agency.

**Advisory Committee Review**

In November 1996, RSPA briefed the Technical Pipeline Safety Committee (TPSSC) on the status and the comments received on this rulemaking. In December 1996, we sent letter ballots to the TPSSC members to vote on the proposed rule and the regulatory evaluation. (The TPSSC is required to serve as a peer review panel and review the costs and benefits associated with any proposed regulatory standard in accordance with 49 USC 60102 (b)(3)). We received 11 out of 15 ballots. These 11 members voted to adopt the NPRM and Regulatory Evaluation. Seven members had comments, which are addressed below.

**The Final Rule**

The final rule establishes a new section in the pipeline safety regulations, § 192.383, ''Excess flow valve Customer Notification.'' The rule requires written notification of customers with natural gas service lines where EFVs meeting prescribed performance criteria can be installed. To be consistent with the final rule that prescribed performance standards for EFVs installed on single-residence service lines operating continuously throughout the year at a pressure not less than 10 psig, this rule limits the scope of customer notification to those customers. Of those single-residence services, the rule further limits written notification to new and replaced service line customers.

**Definitions**

RSPA defines a replaced service line as a natural gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

RSPA defines the service line customer an operator must notify as the person who pays the gas bill, or where service has not yet been established, the person requesting service. Under this definition, the person who pays the gas bill may be the tenant, the owner, or a third party. In cases where service has not yet been established, such as a new subdivision or cluster of homes, the person requesting new service may be the home builder.

**What to Put in the Written Notice**

This rule requires that the notification contain the minimum amount of information the statute requires. An operator may decide how to word that information as long as sufficient information is given to provide the customer a basis to decide whether to pay for EFV installation. The notice must gear the explanations to the gas consumer, not an engineer.

*—Meets DOT Performance Standards*

An explanation that an excess flow valve meeting minimum DOT-prescribed performance standards is available for the operator to install on the service line if the customer pays the cost of installation. The explanation must make clear to the customer that EFV installation is not mandatory, but that if the customer requests installation and pays all costs associated with installation, the operator will install an EFV.

*—Safety Benefits*

An explanation of the potential safety benefits of installing an EFV, to include that an EFV is designed to shut off the flow of natural gas automatically if the service line breaks.

*—Cost Associated With Installation, Maintenance, and Replacement*

An explanation that if the customer requests the operator to install an EFV, the customer bears all costs associated with installation, and what those costs are. In addition, the notice must alert the customer that costs for maintaining and replacing the EFV may be incurred, and what those costs would be, to the extent known.

**Additional Information in the Written Notice**

The final rule does not require an operator include additional information, such as EFV manufacturers' brochures and a consumer group's telephone number, in the notification. Although we are not requiring such information to be included, we encourage operators to include any information that aids a customer's decision making.

**When Notification and Installation Must be Made**

The final rule requires that one year after the final rule is published, an operator must notify each service line customer of a new service line (single-residence service line that operates at a pressure not less than 10 psig) when the customer applies for service. On replaced service lines, an operator must notify each customer (single-residence service line operating at a pressure not less than 10 psig) when the operator determines the service line will be replaced. If a customer requests installation, the operator must install the EFV at a mutually agreeable date.

**What Records Are Required**

The final rule requires that an operator must make certain records available for inspection:

(1) A copy of the notice currently in use; and

(2) Evidence that notices have been sent to the service line customers (new and replaced single-residence service lines operating at a pressure not less than 10 psig) within the previous 3 years.

**When Notification is Not Required**

In the NPRM, we sought comment from operators, state pipeline safety agencies, their representative associations and others on the issue of a state or locality preventing an operator from charging the customer for EFV installation costs. We also sought comment on whether the waiver process in such a situation would be too burdensome. We did not receive any comment. Thus, in RSPA's judgment the regulatory waiver process now in place may be used if a State or local authority prevents or restricts the gas utility from accepting a customer's payment for EFV installation costs. Similarly, if an operator believes that in a particular situation, compliance would be infeasible, impractical or unreasonable, the operator may apply for a regulatory waiver.

The final rule describes certain limited circumstances where an operator would not have to notify a customer.

- Service lines where the operator will install an excess flow valve voluntarily or where the state or local jurisdiction requires installation.
- If excess flow valves meeting the prescribed performance standards are not available to the operator.
- Where an operator has prior experience with contaminants in the gas stream that could interfere with an EFV's operation, cause loss of service to a residence, or where installing an EFV would interfere with necessary operation or maintenance activities, such as blowing liquids from the line.
- In emergency and short time notice replacement situations where an operator cannot notify a customer before replacing a service line. Examples of these situations would be where an operator has to quickly replace a service line because of

—third party excavation damage

—Grade 1 leaks, as defined in the Appendix G–192–11 of the Gas Piping Technology Committee (GPTC) Guide for Gas Transmission and Distribution Systems,

—a short notice service line relocation request

We have allowed an exemption from notification when an operator must quickly replace a service line because of third party damage. Although the impetus for this notification rule was to mitigate the consequences of service line failures, particularly, when caused by third party excavators, we recognize that in such an emergency, an operator may not be able to notify a customer. Nonetheless, although not required to do so, we urge operators to make their best efforts to notify customers in emergency situations, so that the consequences of any future failures may be mitigated.

**Discussion of Comments**

RSPA received 49 comments in response to the NPRM. Commenters included two industry associations (AGA, New England Gas Assoc.), 37 local distribution companies, two consultants, seven city and state agencies, and one federal safety agency (NTSB). In addition, we received comments from TPSSC members. Of these comments, 12 were opposed to issuing any notification rule, and the remaining commenters directed their remarks to specific issues.

*General Comments*—Twelve commenters were opposed to issuing the rule. They questioned the reliability, the benefit versus costs, and the suitability of EFVs to handle the majority of leaks encountered in a gas distribution system. They argued that our focus should be on preventing third-party damage, that incidents involving the type of failures where an EFV is effective are infrequent, and that because most operators design their load systems for future use, EFVs would severely restrict load growth.

Two commenters said the typical customer is not well versed in gas industry technology, safety matters or frequency of service line failures, and may even be confused when asked to make a decision on EFVs. Two commenters suggested that verbal notification may be sufficient.

NTSB pointed out that the statute placed no limits on the type of customer who should receive notification. NTSB recommended we require notice of EFV availability to all residential and commercial customers with service lines that have operating parameters compatible with any commercially available EFV.

*Response*—RSPA is following its statutory mandate to prescribe regulations requiring operators to notify customers in writing about EFV availability, the safety benefits derived from installation, and costs associated with installation, maintenance and replacement, and requiring operators to install an EFV at the customer's request if the customer pays the installation costs. We considered all comments in developing final regulations.

If notification contains this minimum amount of information, and is written for an average gas customer, the customer should be able to decide whether it wants an EFV installed. If a customer has questions, an operator should be able to provide knowledgeable personnel who can explain technical information to a customer's satisfaction to enable the customer to make a well-reasoned decision about installation.

RSPA determined that it would neither be practical nor cost beneficial for operators to notify all single-residence customers. Determining whether EFVs can be installed on existing lines presents difficulties (such as lack of relevant records and historical data) not encountered on new and replaced lines. Furthermore, RSPA's economic evaluation shows that requiring notification to all single-residence customers would result in substantially higher costs with marginal safety benefits due to the increased time an operator would have to spend in responding to customer inquiries and determining operating conditions on existing lines. Because of the increased installation costs to retrofit an existing line, it would be unlikely that many existing customers would choose to pay the costs of installation. Nonetheless, RSPA encourages operators to consider expanding notification to all single-residence customers.

RSPA will consider extending the scope of notification to hospitals, schools, commercial enterprises, and apartment buildings after EFV standards and guidelines are published by the American Society of Testing and Materials (ASTM) F17.40 committee and the American National Standards Institute (ANSI)/Gas Piping Technology Committee (GPTC) Z380.

*Comments on Cost/Benefit Study*—Five commenters said that we had underestimated the costs to comply with the rule. They explained that the cost of developing a utility-specific notice will be significant because of the legal, safety, and customer issues involved, and that we should consider $35 to $45 per hour as the cost to develop and review the notice. Commenters said many calls would need an engineer or a supervisor to talk to the customer. AGA said the study had failed to address who would incur the costs if the customer wants the EFV removed, or if a properly installed EFV later malfunctions and cuts off service.

Advisory Group: One member pointed out that postage costs were not included in the total cost to notify all existing residential customers. This member suggested including the estimated number of customers who would request an EFV in each case, and a cost comparison of excavation costs for new and existing customers.

*Response*—RSPA has revised its final economic evaluation in light of the comments to include the labor costs of preparing and mailing the notice, and the costs of fringe benefits in the hourly costs. In addition, we revised the salary estimates of the person responding to customer inquiries to accommodate concerns that answering such inquiries may require technical expertise.

RSPA did not include postage costs in its estimate of the cost to notify existing customers because the notification could be included with the customer's monthly bill. We also did not estimate the number of customers who might request an EFV because we have no relevant data. The cost/benefit study did explain in comparing the costs to notify new and replaced customers versus existing customers that existing customers requesting EFV installation might have to pay $500 or more for installation mostly due to excavation cost. The cost/benefit study is described later in this document and is available in the docket.

*Proposed Section 192.383(a)—(68.9 kPa (10 psig) Threshold)*—Six commenters said that a 68.9 kPa (10 psig) threshold for installing an EFV should not be used as a notification threshold. NTSB said that EFVs should be made available to customers having service lines that operate at pressures as low as 34.5 kPa (5 psig). The other commenters did not want the 68.9 kPa (10 psig) threshold because if the service line pressure for each customer is not recorded, it would be difficult to know if the line pressure will drop below 68.9 kPa (10 psig). Some commenters suggested that a minimum pressure threshold should be left to the operator's judgment.

*Response*—We proposed that an operator notify a customer of a new or replaced service line that operates at a pressure not less than 68.9 kPa (10 psig) because this is the pressure threshold we had established for EFV installation in the performance standards. We explained our reasons for setting this threshold in that final rule [61 FR 31449; June 20, 1996].

The final rule continues to limit notification to new and replaced service lines meeting the 10 psig threshold. In making this decision, we also considered that:

—Most households in the United States receive natural gas from their service lines between 68.9 kPa (10 psig) to 413.4 kPa (60 psig).

—DOT's incident report data indicates that services in the 34.5 kPa (5 psig) to 68.9 kPa (10 psig) pressure range are unlikely to experience incidents from outside force damage. (A survey of incidents from 1984 to 1992 shows that one out of 212 reportable incidents occurred due to outside force damage).

*Comments on Section 192.383(a)—(Service Lines Covered Under This Rule)*—One commenter asked if customer-owned service lines were covered. Another commenter said that the proposed rule was unclear whether notification should be sent to two customers if both are supplied from the same service line.

*Response*—This rule applies to service lines serving a single residence. One service line serving two or more residents would not be covered. Customer-owned service lines operating at or above the 10 psig pressure requirement are included unless one of the notification exemptions applies.

*Proposed Sections 192.383(a)(1), (a)(3) and (b)—(Costs Associated With EFV Installation)*—We proposed that if a customer requested EFV installation, the customer pay the costs associated with installation and defined those costs as the direct costs (parts and labor) of installation. We also proposed that an operator must install an EFV if the customer agrees to pay all installation costs.

AGA said that Congress clearly intended for the customer to incur *all* costs including operation and maintenance. Several commenters stated that we must follow Congress's intent to require customers pay for operating and maintaining the EFV, in addition to the installation costs. Some commenters said that costs must include all incremental parts, labor and maintenance. They said costs such as repair, resetting, replacement, and deactivation can be substantial. Three commenters argued that we have no authority to mandate a costing methodology because that authority lies with the state public utility or commission. Some commenters complained that direct costs had not been clearly defined.

NTSB commented that the language in the proposed rule requiring customers to pay replacement costs is inconsistent with the preamble's discussion that operators recoup only the direct costs of installation. NTSB also pointed out that the experience of the two largest users of EFVs, who had not had any design-related EFV failure in the last 20 years, supported not including replacement costs.

Advisory Group: Two members said costs should include indirect costs of installing or replacing the EFV, including maintenance and replacement costs. One member said costs incurred due to false closure or other inappropriate operation should be included.

*Response*—The statute requires that an operator notify its customers of the costs associated with installation, maintenance and replacement but that the operator install an EFV if the customer pays the installation costs. In following this mandate, we are requiring that an operator notify its customers that costs for maintaining and replacing an EFV could be incurred after installation and what those costs are, to the extent known. The notice must also explain that if the customer requests installation, the customer has to pay the installation costs at that time, and what those costs are.

RSPA recognizes that the regulatory authority to price gas lies with state and local public utility commissions. We believe that public utility commissions will recognize that EFV installation, maintenance and replacement costs are legitimate costs and allow operators to charge for those services, to the same extent they are allowed to charge for other service line services. Nonetheless, we believe that to carry out the statutory requirements, we should define some of the costs.

The proposed rule defined installation costs as direct costs (parts and labor) of installing an EFV. We proposed a limit on what an operator could recoup for installing an EFV so that an EFV would not be cost prohibitive. We believe Congress intended gas customers to have a reasonably priced extra safety protection. In finalizing this rule we have attempted to clarify the installation costs that an operator should recoup. Installation costs of an EFV are costs directly connected with installation of EFVs, for example, costs of parts, labor, inventory and procurement.

Although the statute was amended to allow an operator to notify its customers about installation, maintenance and replacement costs, a customer only has to pay installation costs to have an EFV installed on its service line. Thus, we believe that an operator may later recoup maintenance and replacement costs only if such costs are ever incurred. These costs are not to be included in the initial installation costs.

*Proposed section 192.383(a)(2)—(Potential Safety Benefits)*—The NPRM proposed that notification include an explanation of potential safety benefits. Eight commenters said that the NPRM did not address the potential hazards from EFVs, which could subject an operator to liability if the EFV fails to perform to a customer's satisfaction. One commenter suggested notification include that an EFV is not designed to protect against slow leaks, system over pressure, or leaks inside the house.

We further proposed that the explanation of safety benefits include that an EFV is designed to shut off the flow of the natural gas when the service line is ruptured. A commenter suggested changing the wording to ''in the event'' the service line is severed, because ''when the service line is ruptured'' implies that a service line will rupture. This commenter also suggested that the term ''rupture'' be replaced with ''severed'', as ''rupture'' is also used for material failures, such as a crack in polyethylene pipe.

*Advisory Group*—One member suggested replacing ''service line is ruptured'' with ''damaged service line conditions cause its closure.'' Another member said the wording ''designed to shut off the flow'' is not accurate as an EFV may not totally shut off flow.

*Response*—The statute requires notification to include EFV benefits. The statute does not preclude an operator from putting in EFV limitations (for example, that an EFV does not protect against slow leaks due to corrosion, threaded joints, or leaks beyond the meter assembly).

We have changed ''rupture'' to ''break'', and ''when'' to ''if the service line breaks'' in the final rule. However, we have retained the phrase ''designed to shut off'' because it is a performance standard requirement for the valve.

*Proposed Section 192.383(a)(4)—(Notification Language)*—The NPRM proposed that notification be ''in sufficient detail'' and ''in language easily comprehensible.'' Two commenters said this is a subjective standard that does not enable the operator to distinguish between acceptable and deficient language.

*Response*—We have revised this requirement. We continue to use performance-based language to ensure that notices are written for the average customer, not for persons with specialized technical expertise.

*Comments on Additional Information That Should be in the Notice*—One commenter said notification should include information that excessive consumption may cause the EFV to activate. This commenter said the operator should not give the customer any warranties about an EFV's operation. One commenter said that gas operators should, in addition to third party damage, describe all conditions, such as, earthquakes, lightning strikes, ground subsidence caused by changing weather conditions, and vandalism, which may cause a pipeline to rupture.

*Response*—RSPA disagrees that excessive consumption may cause an EFV to activate. If the valve meets the DOT performance standards and is chosen properly based on the service line consumption, then the valve will not activate unless consumption exceeds 50% above the maximum flow, an unlikely event. We have used the phrase ''if the service line breaks'' to acknowledge that other conditions may cause a service line failure. However, we leave to the operator's discretion whether to describe all conditions that may cause a pipeline to fail.

*Proposed Section 192.383(a)(5)—(Comments on Definitions of Replaced Service Line & Service Line Customer)*—Twenty six commenters requested further clarification of the proposed ''replaced'' service line and ''service line customer'' definitions.

*Replaced Service Line*—We proposed a ''replaced'' service line as one in which a section of pipe is replaced between the gas main and meter set assembly. Two commenters suggested a ''replaced'' service line should be as where a fitting connecting the service line to the main is replaced or when the service is replaced completely from the main to the meter assembly. One commenter suggested a ''replaced'' line as one where at least 50% of the service line is being replaced. AGA recommended that a ''replaced'' service line refer to a natural gas service line in which the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

*Advisory Group*—Two members recommended we use AGA's definition of ''replaced'' service line.

*Service Line Customer*—We proposed that a ''service line customer'', the person the operator should notify, should be the person paying the gas bill or where the service was not yet established, the owner of the property. AGA suggested that where service has not yet been established, the service line customer should be the person requesting service. Two commenters suggested the person notified should be the person requesting service, or where gas service exists and the residence is vacant, the owner of the property. One commenter said the person notified should be the builder, not the owner of the property who signs for new service.

NTSB said the proposed definition does not allow persons at risk, specifically renters in new housing subdivisions, to decide whether an EFV should be installed. NTSB said that because our definition limited operators to notifying builders in new housing subdivisions, we should require notification of both renters and the owners of the rented buildings.

Some commenters said the proposed wording could be misread to suggest all customers must be notified. Commenters suggested using ''each applicable customer'' and define ''applicable customer'' as those customers meeting the criteria in 192.383 (a). AGA and other commenters suggested adding another definition to clarify which customers should be notified.

*Response*—We have revised the ''replaced'' service line and ''service line customer'' definitions. We have also re-written the regulation for clarity, to eliminate any confusion over which gas customers must be notified. NTSB's comment that both renters and owners be notified would create conflict if one wanted an EFV installed and the other did not. Proposed section 192.383(a)(5) is changed to section 192.383(b) in the final rule.

*Proposed Section 192.383(c)—(30 Day Notification and One Year Implementation Requirements)*—Practically all commenters expressed concern about the proposed requirement that an operator notify each customer thirty days before a new or replaced service line is installed. They said thirty days was impractical and unduly burdensome. Commenters explained that operators currently schedule and complete regularly planned service line installations in less than 30 days. Moreover, operators replace service lines immediately for public safety and good customer service. Some commenters suggested allowing an operator to establish its own criteria for when to notify. One commenter said that we did not clearly state how many times the service line customer should be notified.

NTSB said the one-year implementation period is too long, and that six months is more than adequate for the industry to prepare for compliance. NTSB explained that EFVs are commercially available and that industry associations are already developing guidance to help operators draft appropriate notices.

*Advisory Group*—Two members recommended a 5 to 10 day notification

period as more appropriate than the proposed 30 days.

*Response*—RSPA agrees that 30 days advance notification is impractical and has revised this requirement. Now an operator must notify a new service line customer (single residence with service line pressure not less than 10 psig) of EFV availability when that customer applies for service. A customer having its service line replaced (single residence with service line pressure not less than 10 psig) must be notified of EFV availability when the operator determines the service line will be replaced. If the customer requests installation, an operator must install the EFV at a mutually agreeable date. In either case, a customer has to be notified only once.

We have kept the one-year implementation period. We disagree that a six-month implementation period is adequate for operators to notify customers. One year is more appropriate for operators to learn which customers to notify, to draft notices, and to instruct personnel to handle inquiries.

*Proposed Section 192.383(d)–(Recordkeeping)*—Six commenters objected to the proposal that operators keep proof that notices have been sent to customers within the previous 3 years. They said that maintaining a list of notified persons will be burdensome and cumbersome, driving up the record keeping cost. Some commenters suggested changing ''proof'' to ''evidence.''

*Advisory Group*—One member argued against any record keeping requirement because of the difficulty in tracking who was notified.

*Response*—To check compliance, RSPA and State inspectors will need to view a copy of the notice operators send customers and evidence that notices have been sent to customers. This evidence may relate to the overall notification process, and need not be customer-specific. For example, a record showing the approximate dates notices are mailed or a written procedure for the notification process would be evidence notices have been sent. Therefore, we have not changed the proposed record keeping requirement.

*Proposed Section 192.383(e)—(Exemptions from Notification Requirements)*—In the NPRM, we sought comment and information on situations where an operator may not be able to notify a customer before replacing a service line. Seventeen commenters responded to this issue. Several commenters said that many repairs made to services to repair minor damage or eliminate leaks involve replacing a short section of line and not exposing the main, and should be exempt from the notification rule. The majority emphasized that notification requirements should not apply to emergency and short notice replacements, such as when a line has to be replaced because of:

—third party excavation damage
—Grade 1 leaks, as defined in the Appendix G–192–11 of the Gas Piping Technology Committee guide for gas transmission and distribution systems (A leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous.)
—a short notice service line relocation request (a short notice request from the customer or a utility to relocate the service line due to, for example, a main being relocated, to prevent interference with new construction, the widening of a street.)

In addition, AGA and three other commenters urged us to exempt a service line where the regulator/meter assembly is within 3.66m (12 feet) of the main. They reasoned that because third party damage on shorter service lines is uncommon, an EFV will not serve any purpose.

One operator said it would not be prudent to put an EFV in any part of the system if contaminants have shown up in other areas of the system. Another commenter said an operator should not have to send notification if it found EFV installation impractical.

*Advisory Group*—Two members recommended adopting an emergency and short notice exemption. One member recommended exempting notification for service lines less than 3.66m (12ft), because third party damage is unlikely on short lines. One member suggested exempting installation in ''impractical or infeasible'' circumstances. Another member said it was unclear whether a waiver was required for a specified exemption.

*Response*—We have amended the notification exemptions to accommodate certain emergency and short notice situations. As explained previously, although we are not requiring notification in those situations, we encourage operators to make their best efforts to notify customers. The consequences of any future service line failures may be mitigated if an EFV is installed. We have not adopted a short line exemption. We believe that because an operator is unlikely to have advance knowledge of a service line's length, creating an exemption for short lines would serve little purpose. While we recognize that on short service lines an EFV may offer little or no protection, because third party damage is unlikely, we believe the customer should decide whether it wants an EFV installed. An operator may decide whether to include information about short line protection.

Although we allow an exemption when an operator has experienced contaminants in the gas stream, we disagree that EFVs should not be installed throughout the entire distribution system if contaminants have shown up in other areas of the system. These are probably isolated instances, unless the operator can demonstrate otherwise.

RSPA believes the listed exemptions should cover most situations. If in a particular instance, an operator believes it should not notify customers because EFV installation would be infeasible, impractical, or unreasonable, the operator may apply for a regulatory waiver.

*Comments on Rearranging Sections*—Three commenters recommended we rearrange sections for clarity.

*Response*—RSPA has rewritten and rearranged the final rule for clarity.

**Regulatory Analyses and Notices**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

A regulatory evaluation has been prepared based on the estimated expense involved in developing and sending customer notification to new and replaced single-residence service line customers.

RSPA has determined that large and moderate-sized gas operators will develop their own customer notice. This should take approximately 40 hours at approximately $40 an hour or a one-time cost of $1,600 per company (40 hours × $40 per hour = $1,600). RSPA estimates in its regulatory evaluation (based on analysis done for an earlier rulemaking on customer-owned service lines) that there are 106 large gas operators and 145 moderate-sized gas operators. Therefore, the cost to the industry to develop the required notice will be a one-time cost of $401,600 (251 × $1,600).

The cost of mailing this notice will be $0.32 plus the estimated $0.1 copying

cost for a one-page notice, for a total cost of $0.42 per customer. If there are 900,000 new or replaced customers annually, the cost of postage for this notice is $378,000 (900,000 × .42 mailing) per year. In our draft economic evaluation, we did not account for the labor cost it takes to mail the notice. One operator suggested 5 minutes per notice by an employee making $11 per hour with an additional 60% for fringe benefits, which calculates to $1,320,000 (900,000 × $11 × 1.6 × 1½ = $1,320,000). The total cost of postage plus labor would be $1,698,000 annually ($378,000 + $1,320,000 = $1,698,000).

Assuming 10% of all notified customers were to call operators for more information would result in 90,000 phone calls. Each call lasting on average five minutes would amount to 7,500 hours (90,000 × 5/60 hrs) spent answering customer inquiries. In the draft evaluation, we estimated the hourly wage for the person answering telephone inquiries would be $15 an hour. One commenter suggested that the person answering telephone inquiries should be an engineer. To reflect that a person with more technical expertise may need to answer a customer's inquiry, we increased the hourly salary estimate to $25 per hour plus benefits. If the employee responsible for answering were paid $25 per hour plus 60% for fringe benefits, the additional cost of these conversations would be $300,000 (75,000 × $25 × 1.6) per year. The total cost to the industry will be the one time cost of developing the notice, $401,600, and the additional cost per year of mailing and handling inquiries, $1,998,000 ($300,000 + $1,698,000 = $1,998,000).

As discussed in the Regulatory Evaluation, the American Public Gas Association (APGA), which represents municipal gas distribution companies (the bulk of small operators), has agreed to assist small and medium-sized operators in developing a generic EFV notification. RSPA also believes that EFV manufacturers, as well as other large companies and state gas associations, are likely to assist smaller gas operators in developing an EFV notice. RSPA believes that, with this help, small and medium-sized operators will choose to use a generic notification rather than incur the cost of developing their own notice. However, even with the cost of notice reproduction, mailing, and handling phone inquiries as described above, we estimate that the cost of developing the required notice will be minimal for small and medium-sized operators.

We considered requiring notification of the availability of EFVs to all customers, not simply new and replaced customers. We rejected this alternative as not being cost-beneficial for two reasons. First, the cost of this rule would be an additional $5.36 million (53.6 million customers × $.10 per copy) just for copying the notice. In addition, assuming 10% of all notified customers were to telephone operators for more information, that would result in 5.36 million additional phone calls. Each call lasting five minutes would amount to 446,666 hours (5.36 million × 5/60 hours). If the employees responsible for answering these inquiries were paid a salary of $25 per hour plus 60% for fringe benefits, the additional cost of handling inquiries would be $17.97 million (5.36M × 1/12 × 1.6 × $25=$17.97M) to the industry. Therefore, the total cost of notifying existing customers would be additional $23.33 million ($5.36M + $17.97M). Second, there would be marginal safety benefit as few existing service line customers would be likely to request EFV installation that could cost more than $500 per service line, mainly due to the excavation costs associated with such installation. Therefore, RSPA concludes that requiring operators to notify all existing customers would cost significantly more and would provide little additional benefit to the public.

*Benefits*

The main benefit of this regulation is that new and replaced service line customers will be provided with the necessary information for them to decide whether they should request that an EFV be installed on their service line. Other expected benefits from this rule are increased EFV use, which could reduce the fatalities, injuries and property damage that can result from excavation-related incidents on gas service lines.

Although the total benefits of this rule cannot be estimated, RSPA has analyzed incidents (March 1991–February 1994) involving 2 fatalities and 16 injuries which may have been prevented with the installation of an EFV. Further, the average property damage from 30 reportable incidents (March 1991–February 1994) involving service lines where EFV may have mitigated the accident was estimated to be $14,082 per incident (1993 dollars). Updating this for November 1997 dollars the average property damage per incident is estimated to be $15,739 per incident.

*Conclusion*

Based on the findings of this evaluation this rule should have minimal economic impact on industry and the public. The regulatory evaluation is available for review in the docket.

*Regulatory Flexibility Act*

The Federal Government is required to determine the impact of its regulations on small entities. Based on the regulatory evaluation, RSPA has determined that the rule will not have a significant impact on a substantial number of small entities. Approximately 1,600 natural gas distribution operators will be affected by this rule. APGA, the trade association of the majority of small operators, has indicated it will assist operators in preparing a notification. Additionally, EFV manufacturers have also offered to assist operators. It is also likely that regional gas associations and large operators will assist smaller operators in developing the appropriate notification. All these actions will serve to minimize the costs to small operators because small operators are apt to use a generic notice created by one of these groups rather than incur the expenses of developing their own notice.

*Paperwork Reduction Act*

This final rule contains information collections that have been submitted for review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). RSPA has made some adjustments to its hourly and cost paperwork burden estimates based on comments it received to its draft economic evaluation. If any commenters have additional concerns that have not previously been submitted, they may submit their comments directly to OMB.

Interested persons are invited to comment on the collection of information. *Comments should address:*

(1) The necessity and utility of the information collection for the proper performance of the agency's functions; (2) the accuracy of the agency's burden estimates, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the information collection burden on the respondents, including the use of automated, electronic, mechanical, or other technological collection techniques.

*Administration:* Department of Transportation, Research and Special Programs Administration;

*Title:* Excess Flow Valves: Customer Notification

*Need for Information:* By notifying customers that they may have an excess flow valve installed on their line at cost, some of the consequences of service line

failures (fatalities, injuries and property damage) could be mitigated.

*Summary:* Operators must demonstrate that they have sent the EFV notification to their customers.

*Proposed Use of Information:* The notification will advise customers that they may request an excess flow valve be installed on their service line at their own expense. Also, by keeping proof that notification was sent, RSPA will be able to ascertain that operators are complying with this regulation.

*Frequency:* Occasionally, once for each new and renewed customer.

*Number of Respondents:* 1,590.

*Estimate of Burden:* 92,540 hours.

*Respondents:* Natural Gas Distribution Operators.

*Estimated Total Annual Burden on Respondents:* 58.2 hours (first year) 51.9 hours each subsequent year.

Comments on the information collection requirements should be submitted within 30 days of the publication of this notice to: the Office of Management and Budget, Office of Information and Regulatory affairs, New Executive Office Building, 725 17th St., NW Washington, D.C. 20503, Att.: Desk Officer RSPA. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*Federalism*

This rule will not have substantial effects on states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

*Unfunded Mandates Reform Act*

This rule does not impose unfunded mandates under the Unfunded mandates reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

**List of Subjects in 49 CFR Part 192**

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR Part 192 as follows:

## PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60110, and 60118; 49 CFR 1.53.

2. Part 192 is amended by adding § 192.383 to read as follows:

**§ 192.383 Excess flow valve customer notification.**

(a) *Definitions.* As used in this section:

*Costs associated with installation* means the costs directly connected with installing an excess flow valve, for example, costs of parts, labor, inventory and procurement. It does not include maintenance and replacement costs until such costs are incurred.

*Replaced service line* means a natural gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

*Service line customer* means the person who pays the gas bill, or where service has not yet been established, the person requesting service.

(b) *Which customers must receive notification.* Notification is required on each newly installed service line or replaced service line that operates continuously throughout the year at a pressure not less than 68.9 m (10 psig) and that serves a single residence. On these lines an operator of a natural gas distribution system must notify the service line customer once in writing.

(c) *What to put in the written notice.* (1) An explanation for the customer that an excess flow valve meeting the performance standards prescribed under § 192.381 is available for the operator to install if the customer bears the costs associated with installation;

(2) An explanation for the customer of the potential safety benefits that may be derived from installing an excess flow valve. The explanation must include that an excess flow valve is designed to shut off the flow of natural gas automatically if the service line breaks;

(3) A description of installation, maintenance, and replacement costs. The notice must explain that if the customer requests the operator to install an EFV, the customer bears all costs associated with installation, and what those costs are. The notice must alert the customer that costs for maintaining and replacing an EFV may later be incurred, and what those costs will be, to the extent known.

(d) *When notification and installation must be made.*

(1) After February 3, 1999 an operator must notify each service line customer set forth in paragraph (b) of this section:

(i) On new service lines when the customer applies for service.

(ii) On replaced service lines when the operator determines the service line will be replaced.

(2) If a service line customer requests installation an operator must install the EFV at a mutually agreeable date.

(e) *What records are required.*

(1) An operator must make the following records available for inspection by the Administrator or a State agency participating under 49 U.S.C. 60105 or 60106:

(i) A copy of the notice currently in use; and

(ii) Evidence that notice has been sent to the service line customers set forth in paragraph (b) of this section, within the previous three years.

(2) [Reserved]

(f) *When notification is not required.*

The notification requirements do not apply if the operator can demonstrate—

(1) That the operator will voluntarily install an excess flow valve or that the state or local jurisdiction requires installation;

(2) That excess flow valves meeting the performance standards in § 192.381 are not available to the operator;

(3) That an operator has prior experience with contaminants in the gas stream that could interfere with the operation of an excess flow valve, cause loss of service to a residence, or interfere with necessary operation or maintenance activities, such as blowing liquids from the line.

(4) That an emergency or short time notice replacement situation made it impractical for the operator to notify a service line customer before replacing a service line. Examples of these situations would be where an operator has to replace a service line quickly because of—

(i) Third party excavation damage;

(ii) Grade 1 leaks as defined in the Appendix G–192–11 of the Gas Piping Technology Committee guide for gas transmission and distribution systems;

(iii) A short notice service line relocation request.

Issued in Washington, D.C. on January 27, 1998.

**Kelley S. Coyner,**

*Acting Administrator.*

[FR Doc. 98–2496 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–60–P

# Proposed Rules

**Federal Register**
Vol. 63, No. 22
Tuesday, February 3, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 958 and 980

**[Docket No. FV97–958–2AN]**

## Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Imported Onions; Possible Increase in Grade Requirements for White Onions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Advance notice of proposed rulemaking; request for public comments.

**SUMMARY:** The Agricultural Marketing Service (AMS) invites comments from producers, handlers, importers, commercial users, and other interested persons on a possible increase in the minimum grade requirements for white onions handled under the Idaho-Eastern Oregon onion marketing order, and for imported white onions. A recommendation to increase the minimum grade for white onions from U.S. No. 2 to U.S. No. 1 is under consideration. Comments pertaining to the volume and grade of imported white onions, as well as to other aspects of the potential grade increase, including its probable regulatory and economic impact on small business entities are sought.

**DATES:** Comments received by April 6, 1998, will be considered prior to issuance of a proposed rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning the issues contained in this notice. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; *Fax:* (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This advance notice of proposed rulemaking invites comments on a possible increase in the minimum grade requirements for Idaho-Eastern Oregon and imported white onions. AMS is seeking information pertaining to the volume and grade of imported white onions, and on the regulatory and economic impact such rulemaking might have on handlers, producers, importers, and other interested parties, including small businesses. All other views, suggestions or comments relative to the proposal in general also are sought. The regulation being considered for amendment governs the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, and is authorized under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958). Any action to amend the domestic onion handling regulation also would affect the Onion Import Regulation (7 CFR 980.117). The marketing agreement, marketing order, and import regulation are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The onion import regulation requires imported onions to meet the same or comparable grade, size, quality, and maturity standards as are in effect for domestic onions under a Federal marketing order. The Act further provides that when two or more marketing orders regulating the same commodity are concurrently in effect, imports will be subject to the requirements established for the commodity grown in the area with which the imported commodity is in most direct competition. Onion import requirements are based on regulations established under the Idaho-Eastern Oregon (7 CFR part 958) and South Texas (7 CFR part 959) onion marketing orders. The action under consideration is a change to the grade requirements for imported white onions during the period the Idaho-Eastern Oregon requirements apply (June 5–March 9).

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the AMS will consider the economic impact any such action would have on small entities and prepare regulatory flexibility analyses for inclusion in any subsequent rulemaking actions. Any actions undertaken as a result of this advance notice or also reviewed by the AMS under Executive Order 12866 and 12988.

This advance notice is based on a unanimous recommendation of the Idaho-Eastern Oregon Onion Committee (Committee). The Committee recommendation would increase the minimum grade requirements for white onion varieties grown in the Idaho-Eastern Oregon onion production area and handled subject to marketing order requirements. Pursuant to section 8e of the Act and the onion import regulation, this action would also affect imported white onions.

The recommended change would increase the minimum grade from U.S. No. 2 to U.S. No. 1, thereby eliminating from the fresh market all U.S. Commercial and U.S. No. 2 white onions produced in the regulated production area and those imported into the U.S. during the period from June 5 through March 9. Information, suggestions, and comments pertaining to the proposal are sought. Anyone having specific information relative to the affect the recommendation to eliminate the importation of U.S. Commercial and U.S. No. 2 white onions would have on the volume of imported white onions is encouraged to comment. Producers, handlers, importers, and other small businesses, both large and small, potentially impacted by the possible grade change also are encouraged to provide comments relative to any probable regulatory and economic impacts.

Section 958.328(a)(1) establishes the grade requirements for white onions handled subject to the Idaho-Eastern onion marketing order. Such grade requirements are based on the U.S. Standards for Grades of Onions (Other

than Bermuda-Granex-Grano and Creole Types)(7 CFR part 51.2830 *et seq.*), or the U.S. Standards for Grades of Bermuda-Grano-Granex Type Onions (7 CFR part 51.3195 *et seq.*). Currently, these handling regulations require that white onion varieties shall be (1) U.S. No. 2 or U.S. Commercial, 1 inch minimum to 2 inches maximum diameter; or (2) U.S. No. 2 or U.S. Commercial, if not more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality, and at least 1½ inches minimum diameter; or (3) U.S. No. 1, at least 1½ inches minimum diameter. The regulations further specify that none of these three categories may be commingled in the same bag or other container.

The change under consideration would require all bags or other containers of white onion varieties shipped subject to marketing order requirements to be either: (1) U.S. No. 1, 1 inch minimum to 2 inches maximum diameter; or (2) U.S. No. 1, at least 1½ inches minimum diameter. Commingling of these two categories would not be allowed. Current exemptions under the order for special purpose shipments in section 958.328(e), and shipments qualifying for a minimum quantity exemption in section 958.328(g), would continue to apply when applicable.

The Committee justified its recommendation stating that the shipment of U.S. No. 2 and U.S. Commercial grade white onions have had a negative impact on producer returns and have been a factor in decreasing this industry's share of the fresh domestic white onion market. In addition, the Committee stated that consumers of white onions traditionally demand a quality product and that U.S. No. 2 and U.S. Commercial grade white onions have poor consumer acceptance.

The Committee stated that producers seldom profit from U.S. No. 2 or U.S. Commercial grade white onion sales, and as a consequence, common business practice for many is to discard such onions as culls following harvest. Furthermore, the Committee indicated that shipments of low quality U.S. No. 2 or U.S. Commercial grade white onions have a depressing influence on the price of the higher quality U.S. No. 1 grade white onions.

An annual average of 336,000 hundredweight of white onions, representing 3.9 percent of the total of all onion varieties, have been shipped from the Idaho-Eastern Oregon production area since the 1986/87 marketing season. The annual average of all Idaho-Eastern Oregon onion shipments for this period, including white, yellow, and red onion varieties, is 9,517,500 hundredweight. During the same period of time, shipments of Idaho-Eastern Oregon U.S. No. 2 white onions averaged 3,807 hundredweight per year, or approximately an annual average of 1.2 percent of white Idaho-Eastern Oregon onion shipments and an annual average of .04 percent of all Idaho-Eastern Oregon onion shipments. Onions from the Idaho-Eastern Oregon production area are shipped throughout the year. The majority of Idaho-Eastern Oregon white onions are marketed during the months of September, October and November, with significant additional volume through February.

As mentioned earlier, section 8e of the Act requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the U.S. are concurrently in effect, a determination must be made as to which of the areas produces the commodity in more direct competition with the imported commodity. Imports must then meet the requirements established for the particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order No. 958 and Marketing Order No. 959, which regulates the handling of onions grown in South Texas, since the marketing orders were established. The current import regulation specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas. The import regulation specifies that imported onions must meet the requirements of the Idaho-Eastern Oregon onion marketing order during the period June 5 through March 9 and the South Texas onion marketing order during the period March 10 through June 4 each season. The Committee's recommendation, if adopted, would change the import requirements for the period June 5 through March 9 of each marketing year to provide that all imported white onion varieties must be U.S. No. 1 grade. While no changes are required in the language of section 980.117, all white onion varieties imported during this period would be required to meet the modified grade requirement should the recommended grade increase eventually be implemented.

During the period June 5 through March 9, the current import regulation requires that all imported onions, except braided red varieties, must be at least U.S. No. 2 grade. During the period March 10 through June 4 the current onion import regulation requires that all imported onions must be U.S. No. 1 grade with an allowable tolerance of up to 20 percent for defects, 10 percent for serious damage, and 2 percent for decay.

White onions are imported into the U.S. throughout the year from a number of different countries. By far the largest source of all imported onions is Mexico. Mexican white onions enter the U.S. from November through July, with the heaviest volumes moving during the months of December through April. The annual average volume of all Mexican onions imported into the U.S. between 1986 and 1996 was 3,333,150 hundredweight, while the annual average volume for all imported onions from all sources during the same period was 4,040,004 hundredweight. Other major sources of imported onions are Canada, Chile, Australia, and New Zealand with small quantities coming from Belgium, France, Guatemala, Israel, Morocco, the Netherlands, and Taiwan. Compiled statistics specific to the volume and grade of imported white onions are not available at this time.

There are approximately 35 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the marketing order and approximately 260 producers, including approximately 80 producers of white onions, in the regulated area. In addition, approximately 150 importers of onions are subject to import regulations and would be affected by the possible grade change discussed in this document. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Although it is unknown how many importers of white onions may be classified as small entities, approximately 9 percent of the handlers and 7 percent of the producers of Idaho-Eastern Oregon white onions may be classified as small entities.

In conclusion, the AMS is soliciting the views of producers, handlers, importers, commercial users, consumers, and other interested persons on possible grade requirement changes for Idaho-Eastern Oregon and imported onions described in this document. Specifically, the AMS is interested in statistical information, suggestions, and comments pertaining to the volume and grade of imported white onions and to the probable regulatory and economic

impact of the proposal on small businesses. All views are solicited, however, so that every aspect of this potential revision may be studied prior to formulating a proposed rule, if such is deemed warranted by the Agency.

This request for public comments does not constitute notification that the recommendation to change the regulations described in this document is or will be proposed or adopted.

A 60-day comment period is provided to allow interested persons the opportunity to respond to this request for information and comments. All written comments timely received will be considered before any subsequent rulemaking action is undertaken.

**Authority:** 7 U.S.C. 601–674.

Dated: January 28, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–2551 Filed 2–2–98; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Rural Business—Cooperative Service

### Rural Utilities Service

### 7 CFR Part 4284

**RIN 0570–AA05**

### Rural Business Opportunity Grants

**AGENCIES:** Rural Business—Cooperative Service and Rural Utilities Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Business-Cooperative Service (RBS) is proposing to issue new regulations for the Rural Business Opportunity Grant (RBOG) Program. This action is needed to implement a new program authorized by section 741 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, to assist economic development in rural areas. The intended effect of this action is to implement the RBOG program.

**DATES:** Written or E-mail comments must be received on or before March 20, 1998 to be assured of consideration. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through April 6, 1998.

**ADDRESSES:** Submit written comments in duplicate to the Branch Chief, Regulations And Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, STOP 0743, Room 6345, 1400 Independence Ave. SW, Washington, DC 20250–0743. Comments may be submitted via the Internet by addressing them to ''Comments@rus.usda.gov'' and must contain the word ''opportunity'' in the subject. All written comments made pursuant to this notice will be available for public inspection between 8:00 a.m. and 4:30 p.m. Monday through Friday, except Holidays, at the above office.

**FOR FURTHER INFORMATION CONTACT:** M. Wayne Stansbery, Loan Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 1521, 1400 Independence Ave. SW, Washington, DC 20250, Telephone (202) 720–6819.

**SUPPLEMENTARY INFORMATION:**

#### Classification

This rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.773, Rural Business Opportunity Grants.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RBS announces its intention to seek Office of Management and Budget (OMB) approval of the reporting and recordkeeping requirements associated with this proposed rule.

The purpose of the RBOG program is to promote sustainable economic development in rural communities with exceptional needs. This will be achieved through grants to public bodies, nonprofit community development corporations or entities and other agencies, to enable the recipients to carry on activities related to rural economic development, such as identifying and analyzing business opportunities, establishing business support centers, and providing training, technical assistance, and planning.

The information requirements contained within the regulations are requested from grant applicants and grant recipients. The information is vital for RBS to make prudent decisions regarding eligibility of applicants and selection priority among competing applicants, to ensure compliance with applicable laws and regulations, and to evaluate the program. It includes information to allow the Agency to determine that an applicant is a legally organized entity with authority to enter into contracts and carry out the proposed activities. It provides for a description and scope of the proposed activities. It includes information on the applicant's financial condition and stability. It includes information to provide for evaluation of grantee accomplishments. It requires information needed to ensure compliance with Executive Orders and provides methods for applicants and grantees to appeal adverse decisions, request changes in grant conditions and request exceptions to the regulations. No new forms are created for this program.

#### Public Burden in 7 CFR Part 4284, Subpart G

At this time, the Agency is requesting OMB clearance of the following burden:

Section 4284.638(a)(2)(i). Copies of organizational documents, such as Articles of Incorporation, Bylaws, and certificates of good standing, are part of the grant application. They are needed so RBS can be sure the applicant is a legal entity with authority to make commitments and perform the activities called for under the proposed grant. They also indicate who is officially in control of the applicant organization.

Section 4284.638(a)(2)(ii). A written scope of work needed to document what the grant funds are to be used for and what is to be accomplished. This is important for evaluating the application and also for monitoring to ensure that funds are used for the purpose for which they were intended.

Section 4284.638(a)(2)(iii). A written narrative is required to provide additional information, beyond what is provided in the scope of work, as to the need for the project, the service area, the applicant's ability to accomplish the planned activities, who will be assisted, what impact is expected, and how the work will be performed. The information is needed to properly evaluate each application and select the most deserving applications for funding.

Section 4284.638(a)(2)(iv). A financial statement is required to help RBS to ensure that an applicant has the financial stability to remain in operation and supplement the grant funds as necessary to accomplish the grant purposes.

Section 4284.638(a)(2)(v). It is an eligibility requirement that applicants include a basis for determining the success or failure of the project in their proposal. This requirement ensures that some method exists for evaluating the success or failure of each grant and that the applicants will have input in determining how they will be evaluated.

Section 4284.638(a)(2)(vi). Intergovernmental Review comments,

obtained by the applicant through contact with the State Single Point of Contact, are required to comply with Executive Order 12372 and to ensure that the proposed activity is not in conflict with strategic plans of State and local governments.

Section 4284.656(a). A project performance report is needed to help the Agency ensure that projects in process are progressing satisfactorily and that completed projects have, in fact been completed and paid for in full. If cost overruns, deviations from the approved scope, or other problems do develop this will help ensure that the Agency is made aware in time to help find a solution.

Section 4284.656(b). A project evaluation is needed to assist the Agency in determining the impact of the grant and of the program.

Section 4284.656(c). A project description is needed for selected projects in order that the information gained from the project can be shared with other communities, and thereby increase the overall effectiveness of the program.

Section 4284.656 (d) and (e). It is necessary for the grantee to keep complete and accurate accounting records as evidence that the grant funds were used properly.

Section 4284.657. Audits are required to help monitor grantee activities and financial condition and ensure the grant funds were used as planned, as well as to comply with OMB circulars and applicable USDA regulations located at 7 CFR 3015, 3016, 3019, and 3051.

Section 4284.668. This provision allows grantees to request changes so that approved projects may be changed, with Agency review and approval, when the change is needed and still within program guidelines.

Section 4284.684. A provision permits grantees to request and obtain, in limited circumstances, exceptions to provisions of this subpart.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 5.7 hours per response.

*Respondents:* Public Bodies and Nonprofit Corporations.

*Estimated Number of Respondents:* 100.

*Estimated Number of Responses per Respondent:* 15.23.

*Estimated Total Annual Burden on Respondents:* 8,704 hours.

The complete text of the proposed rule is published herein for public review and comment. Additional copies of the proposed regulations or copies of referenced forms may be obtained from Sam Spencer, Rural Business Team Information Collection Coordinator, by calling (202) 720–9588. Written requests may also be submitted to Sam Spencer, Rural Business Team Information Collection Coordinator, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Ave. SW, Washington, DC 20250–0743.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Sam Spencer, Rural Business Team Information Collection Coordinator, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Ave. SW, Washington, DC 20250–0743. All responses to this notice will be summarized, be included in the request for OMB approval, and become a matter of public record. OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

**Intergovernmental Review**

Rural Business Opportunity Grants are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials. RBS has conducted or will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration Programs and Activities,'' and in 7 CFR 3015, subpart V.

**Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

**Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act, RBS has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C.

601). RBS made this determination based on the fact that this regulation only impacts those who choose to participate in the grant program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

**Background**

RBS proposes a new regulation to implement a grant program to fund technical assistance and planning activities in rural areas for the purpose of improving economic conditions in the areas. This action is necessary to comply with section 741 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127. Grants will be available to public bodies, nonprofit corporations, Indian tribes, and cooperatives. Grants may be used for technical assistance for business development and economic development planning; identifying and analyzing business opportunities that will use local rural materials or human resources, including opportunities in export markets as well as feasibility and business plan studies; identifying, training, and providing technical assistance to existing or prospective rural entrepreneurs and managers; establishing business support centers and otherwise assisting in the creation of new rural businesses; conducting local community or multi-county economic development planning; establishing centers for training, technology, and trade that will provide training to rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets; and conducting leadership development training of existing or prospective rural entrepreneurs and managers.

Nonmetropolitan median family income stagnated during the 1980's and continued substantially unchanged through the early 1990's. The 1992 rural poverty rate of 16.8 percent was not statistically different from the 1989 rate, but was significantly higher than the urban poverty rate of 13.9 percent. Perhaps of more concern than the average or median figures is that rural income, poverty levels, and employment are uneven. During the 1980's, over one half of rural counties suffered declines in real median household income. Median real income generally increased in metropolitan areas, held steady in counties adjacent to metropolitan areas, and fell in more isolated rural counties. This put remote and persistently low-income counties in a relatively worse income position compared to metropolitan areas. Also, rural minorities continue to be disproportionately poor, with poverty rates highest among blacks, but increasing more rapidly among Hispanics.

The implementation of this program is part of an initiative to enhance the future prosperity of rural people through investments that enhance rural competitiveness, facilitate industrial conversion, and enable rural citizens to profit from private economic activity. The implementation of this program will provide rural business with technical assistance not previously available. The business will be able to provide jobs, economic activity, and economic diversification in rural communities.

**List of Subjects in 7 CFR Part 4284**

Business and industry, Economic development, Grant programs—Housing and community development, Rural areas.

Therefore, chapter XLII, title 7, Code of Federal Regulations, is proposed to be amended as follows:

## PART 4284—GRANTS

1. The authority citation for part 4284 continues to read as follows:

**Authority:** 5 U.S.C. 301, 7 U.S.C. 1989, 16 U.S.C. 1005.

2. Subpart G of part 4284, consisting of § § 4284.601 through 4284.700, is added to read as follows:

## Subpart G—Rural Business Opportunity Grants

Sec.

4284.601 Purpose.
4284.602 Policy.
4284.603 Definitions.
4284.604–4284.619 [Reserved]
4284.620 Applicant eligibility.
4284.621 Eligible grant purposes.
4284.622–4284.628 [Reserved]
4284.629 Ineligible grant purposes.
4284.630 Other considerations.
4284.631–4284.637 [Reserved]
4284.638 Application processing.
4284.639 Grant selection criteria.
4284.640 Appeals.
4284.641–4284.646 [Reserved]
4284.647 Grant approval and obligation of funds.
4284.648 Fund disbursement.
4284.649–4284.655 [Reserved]
4284.656 Reporting.
4284.657 Audit requirements.
4284.658–4284.666 [Reserved]
4284.667 Grant servicing.
4284.668 Programmatic changes.
4284.669–4284.683 [Reserved]
4284.684 Exception authority.
4284.685–4284.698 [Reserved]
4284.699 Congress.
4284.700 OMB control number.

## Subpart G—Rural Business Opportunity Grants

### § 4284.601 Purpose.

This subpart outlines Agency policies and authorizations and sets forth procedures for making grants to provide technical assistance for business development and conduct economic development planning in rural areas. The purpose of this program is to promote sustainable economic development in rural communities with exceptional needs by:

(a) Promoting economic development that is sustainable over the long term through local effort without subsidies or external support and that leads to improvements in quality as well as the quantity of economic activity in the community;

(b) Catalyzing economic development projects by providing critical investments that enable effective development projects to be undertaken by rural communities that, with the assistance, will be able to identify their needs and take full advantage of available resources and opportunities;

(c) Focusing assistance on priority communities (defined in § 4284.603); and

(d) Sponsoring economic development activities with significant potential to serve as examples of ''best practices'' that merit implementation in rural communities in similar circumstances.

### § 4284.602 Policy.

(a) The grant program will be used to assist in the economic development of rural areas.

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity, along with other rural residents, to participate in the benefits of these programs.

### § 4284.603 Definitions.

*Agency*—The Federal agency within the United States Department of Agriculture (USDA) with responsibility assigned by the Secretary of Agriculture to administer the Rural Business Opportunity Grants (RBOG) Program. At the time of publication, of this part in the **Federal Register**, that agency is the Rural Business-Cooperative Service.

*Best practice project*—An action that has potential applicability in other rural communities and which potentially has instructional value when shared with those communities.

*Business support centers*—Centers established to provide assistance to businesses in such areas as counseling, business planning, training, management assistance, marketing information, and locating financing for business operations. The centers need not be located in a rural area, but must provide assistance to businesses located in rural areas.

*Economic development*—The industrial, business and financial augmentation of an area as evidenced by increases in total income, employment opportunities, value of production, duration of employment, or diversification of industry, reduced outmigration, higher labor force participation rates or wage levels, or gains in other measurements of economic activity, such as land values.

*Planning*—A process to coordinate economic development activities, develop guides for action, or otherwise assist local community leaders in the economic development of rural areas.

*Priority communities*—Communities targeted for Agency assistance as determined by the USDA Under Secretary for Rural Development. Priority communities are those that are experiencing trauma due to natural disasters or are undertaking or completing fundamental structural changes, have remained persistently poor over the past 60 years or longer, or have experienced long-term population decline or job deterioration.

*Project*—The result of the use of grant funds provided under this subpart through technical assistance or planning relating to the economic development of a rural area.

*Rural and rural area*—Any area of a State that is not within the boundaries of a city with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States.

*State*—Any of the 50 states, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

*Technical assistance*—A nonconstruction, problem solving activity performed for the benefit of a business or community to assist in the economic development of a rural area. The Agency will determine whether a specific activity qualifies as technical assistance.

*United States.* The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

**§§ 4287.604–4287.619 [Reserved]**

**§ 4284.620 Applicant eligibility.**

(a) Grants may be made to public bodies, nonprofit corporations, Indian tribes on Federal or State reservations and other Federally recognized tribal groups, and cooperatives with members that are primarily rural residents and that conduct activities for the mutual benefit of the members.

(b) Applicants must have sufficient financial strength and expertise in activities proposed in the application to ensure accomplishment of the described activities and objectives.

(c) Any delinquent debt to the Federal Government shall cause the applicant to be ineligible to receive any RBOG funds until the debt has been paid.

**§ 4284.621 Eligible grant purposes.**

(a) Grant funds may be used to assist in the economic development of rural areas by providing technical assistance for business development and economic development planning. Grant funds may be used for, but are not limited to, the following purposes:

(1) Identify and analyze business opportunities that will use local rural materials or human resources. This includes opportunities in export markets, as well as feasibility and business plan studies;

(2) Identify, train, and provide technical assistance to existing or prospective rural entrepreneurs and managers;

(3) Establish business support centers and otherwise assist in the creation of new rural businesses;

(4) Conduct local community or multi-county economic development planning;

(5) Establish centers for training, technology, and trade that will provide training to rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets;

(6) Conduct leadership development training of existing or prospective rural entrepreneurs and managers; or

(7) Pay reasonable fees and charges for professional services necessary to conduct the technical assistance, training, or planning functions.

(b) Grants may be made only when there is a reasonable prospect that the project will result in the economic development of a rural area.

(c) Grants may be made only when the proposal includes a basis for determining the success or failure of the project and individual major elements of the project and outlines procedures that will be taken to assess the project's impact at its conclusion.

(d) Grants may be made only when the proposed project is consistent with local and area-wide strategic plans for community and economic development, coordinated with other economic development activities in the project area and consistent with any USDA Rural Development State Strategic Plan.

(e) A grant may be considered for the amount needed to assist with the completion of a proposed project, provided that the project can reasonably be expected to be completed within 2 full years after it is begun. If grant funds are requested to establish or assist with an activity of more than 2 years duration, the amount of a grant approved in any fiscal year will be limited to the amount needed to assist with no more than 1 full year of operation. Subsequent grant requests may be considered in subsequent years, if needed to continue the operation, but funding for 1 year provides no assurance of additional funding in subsequent years.

**§§ 4284.622–4284.628 [Reserved]**

**§ 4284.629 Ineligible grant purposes.**

Grant funds may not be used to:

(a) Duplicate current services or replace or substitute support previously provided;

(b) Pay costs of preparing the application package for funding under this program;

(c) Pay costs of the project incurred prior to the effective date of the grant made under this subpart;

(d) Fund political activities;

(e) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(f) Pay any judgment or debt owed to the United States; or

(g) Pay costs of real estate acquisition or development or building construction.

**§ 4284.630 Other considerations.**

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to Title VI of the Civil Rights Act of 1964 and part 1901, subpart E, of this title.

(b) *Environmental review.* All grants made under this subpart are subject to

the requirements of subpart G of part 1940 of this title. Applications for technical assistance or planning projects are generally excluded from the environmental review process by § 1940.333 of this title. However, as further specified in that section, the grantee in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the ultimate recipient of the technical assistance. Plans developed with grant funds received under this subpart must be generally documented to include the important environmental resources within the planning area and the potential environmental impacts of the plan as well as the alternative planning strategies that were reviewed.

(c) *Other USDA regulations.* This program is subject to the provisions of the following regulations, as applicable, which are incorporated by reference herein:

(1) 7 CFR part 3015, ''Uniform Federal Assistance Regulations'';

(2) 7 CFR part 3016, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'';

(3) 7 CFR part 3017, ''Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)'';

(4) 7 CFR part 3018, ''New Restrictions on Lobbying'';

(5) 7 CFR part 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations''; and

(6) 7 CFR part 3051, ''Audits of Institutions of Higher Education and other Nonprofit Institutions.''

**§§ 4284.631–4284.637 [Reserved]**

**§ 4284.638 Application processing.**

(a) *Applications.* (1) Applicants will file an original and one copy of an ''Application For Federal Assistance (For Nonconstruction)'' with the Agency State Office. This form is available in all Agency offices.

(2) All applications shall be accompanied by:

(i) Copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant;

(ii) A proposed scope of work, including a description of the proposed project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from grant approval to beginning of project implementation;

(iii) A written narrative which includes, at a minimum, the following items:

(A) An explanation of why the project is needed, the benefits of the proposed project, and how the project meets the grant selection criteria;

(B) Area to be served, identifying each governmental unit, *i.e.*, town, county, etc., to be affected by the project;

(C) Description of how the project will coordinate economic development activities with other economic development activities within the project area;

(D) Business to be assisted, if appropriate; economic development to be accomplished;

(E) An explanation of how the proposed project will result in increased or saved jobs in the area and the number of projected new and saved jobs;

(F) Description of the applicant's demonstrated capability and experience in providing the proposed project assistance or similar economic development activities, including experience of key staff members and persons who will be providing the proposed project activities and managing the project;

(G) Method and rationale used to select the areas and businesses that will receive the service;

(H) Brief description of how the work will be performed including whether organizational staff or consultants or contractors will be used; and

(I) Other information the Agency may request to assist it in making a grant award determination.

(iv) The latest financial information to show the organization's financial capacity to carry out the proposed work. At a minimum, the information should include the most recent balance sheet and an income statement. A current audited report is required if available;

(v) An evaluation method to be used by the applicant to determine if objectives of the proposed activity are being accomplished; and

(vi) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372.

(b) *Letter of conditions.* The Agency will deliver a letter to the applicant setting out the conditions under which the grant will be made.

(c) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return a ''Letter of Intent to Meet Conditions,'' to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

**§ 4284.639 Grant selection criteria.**

Agency officials will select projects to receive assistance under this program according to the following criteria:

(a) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which economic development resulting from the proposed project will be sustainable over the long term by local efforts, without the need for continued subsidies by governments or other organizations outside the community or communities that will receive the primary benefit of the grant.

(b) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which the project should lead to improvements in the quality of economic activity within the community or communities that will receive the primary benefit of the grant, such as higher wages, improved benefits, greater career potential, and the use of higher levels of skills than currently are typical within the economy.

(c) If the grant will fund a critical element of a larger program of economic development, without which the overall program either could not proceed or would be far less effective, or if the program to be assisted by the grant will also be partially funded from other sources, points will be awarded as follows based on the percentage of the cost of the overall program that will be funded by the grant.

(1) Less than 20 percent—30 points;

(2) 20 but less than 50 percent—20 points;

(3) 50 but less than 75 percent—10 points; or

(4) More than 75 percent—0 points.

(d) Points will be awarded for each of the following criteria met by the community or communities that will receive the primary benefit of the grant. However, regardless of the mathematical total of points indicated by paragraphs (d)(1) through (d)(5) of this section, total points awarded under paragraph (d) must not exceed 40.

(1) Experiencing trauma due to a major natural disaster that occurred not more than three years prior to the filing of the application for RBOG assistance—15 points;

(2) Undergoing fundamental structural change in the local economy, such as that caused by the closing or

major downsizing of a military facility or other major employer not more than 3 years prior to the filing of the application for RBOG assistance—15 points;

(3) Has remained consistently poor over the past 60 years or more—10 points;

(4) Has experienced long-term population decline—10 points; and

(5) Has experienced long-term job deterioration—10 points.

(e) A score of 0 to 10 points will be awarded based on the Agency determination of the extent of the project's usefulness as a new best practice as defined in § 4284.603.

(f) State Directors may assign up to 15 discretionary points to an application. If allocation of funds under National Office control is being considered, the Agency Administrator may assign up to 20 additional discretionary points. Assignment of discretionary points by either the State Director or the Agency Administrator must include a written justification. Justifications are geographic distribution of funds, special importance for implementation of a strategic plan in partnership with other organizations, and extraordinary potential for success due to superior project plans or qualifications of the grantee.

**§ 4284.640 Appeals.**

Any appealable adverse decision made by the Agency may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11.

**§§ 4284.641–4284.646 [Reserved]**

**§ 4284.647 Grant approval and obligation of funds.**

The following statement will be entered in the comment section of the ''Request for Obligation of Funds,'' which must be signed by the Grantee:

''The Grantee certifies that it is in compliance and will continue to comply with all applicable laws; regulations; Executive Orders; and other generally applicable requirements, including those set forth in 7 CFR part 4284, subpart G, and 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3051 in effect on the date of grant approval; and the approved Letter of Conditions.''

**§ 4284.648 Fund disbursement.**

The Agency will determine, based on 7 CFR parts 3015, 3016, and 3019 as applicable, whether disbursement of a grant will be by advance or reimbursement. A ''Request for Advance or Reimbursement'' must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

**§§ 4284.649–4284.655 [Reserved]**

**§ 4284.656 Reporting.**

(a) A ''Financial Status Report'' and a project performance activity report will be required of all grantees on a quarterly calendar year basis. The Grantee will cause said program to be completed within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by Grantee and approved by the Agency. A final project performance report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and saved as a result of the grant. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original of each report to the Agency. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

(b) Within 1 year after the conclusion of the project, the grantee will provide a project evaluation report based on criteria developed in accordance with § § 4284.621(c) and 4284.638(a)(2)(v) of this subpart.

(c) The Agency may also require grantees to prepare a report suitable for public distribution describing the accomplishments made through the use of the grant and, in the case where the grant funded the development or application of a ''best practice,'' to describe that ''best practice.''

(d) The grantee will provide for Financial Management Systems which will include:

(1) Accurate, current, and complete disclosure of the financial result of each grant.

(2) Records which identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(3) Effective control over and accountability for all funds. Grantee shall adequately safeguard all such assets and shall assure that funds are used solely for authorized purposes.

(e) The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Microfilm copies may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

**§ 4284.657 Audit requirements.**

Public body grantees will provide an annual audit in accordance with 7 CFR part 3015, subpart I. Nonprofit corporation grantees will provide an annual audit in accordance with 7 CFR part 3051. The audit requirements apply to the years in which grant funds are disbursed to the grantee and years in which work is accomplished that will be paid for with grant funds.

**§§ 4284.658–4284.666 [Reserved]**

**§ 4284.667 Grant servicing.**

Grants will be serviced in accordance with part 1951, subparts E and O, of this title. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis. Grantee shall relinquish any and all copyrights or privileges to the material developed under this grant as published in whole or in part. The material shall contain notice and be identified by language to the following effect: ''This material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source.''

**§ 4284.668 Programmatic changes.**

The Grantee shall obtain prior approval for any change to the scope or

objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

**§§ 4284.669–4284.683 [Reserved]**

**§ 4284.684 Exception authority.**

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law, provided the Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

**§§ 4284.685–4284.698 [Reserved]**

**§ 4284.699 Congress.**

No member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

**§ 4284.700 OMB control number.**

Dated: January 22, 1998.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 98–2553 Filed 2–2–98; 8:45 am]

**BILLING CODE 3410–XY–U**

## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 121

## Small Business Size Standards; Engineering Services, Architectural Services, and Surveying and Mapping Services

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) is proposing a size standard of $7.5 million in average annual receipts for general Engineering Services (part of Standard Industrial Classification (SIC) code 8711), $5.0 million for Architectural Services (SIC code 8712) and $3.5 million for Surveying and Mapping Services (SIC code 8713 and part of SIC code 7389). The current size standard for each of these industries is $2.5 million. The proposed revisions are being made to better define the size of business in those industries that the SBA believes should be eligible for Federal small business assistance programs.

**DATES:** Comments must be submitted on or before April 6, 1998.

**ADDRESSES:** Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, S.W., Mail Code 6880, Washington D.C. 20416.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Ray, Office of Size Standards, (202) 205–6618.

**SUPPLEMENTARY INFORMATION:** The SBA is proposing a revision to the size standard for general Engineering Services (part of SIC code 8711) from $2.5 million to $7.5 million. The other size standards applicable to Engineering Services under SIC code 8711—Military and Aerospace Equipment, Military Weapons, Marine Engineering, and Naval Architecture—are not being reviewed as part of this proposed rule. The rule also proposes a revision to the size standard for the Architectural Services industry (SIC code 8712) from $2.5 million to $5 million and a revision to the size standard for the Surveying and Mapping Services industry (SIC code 8713 and part of SIC code 7389) from $2.5 million to $3.5 million.

From September 30, 1988 until September 30, 1996, the SBA was prohibited by statute from changing the size standards for general engineering services, architectural services, and surveying and mapping services. These industries are subject to the special procurement procedures of the Small Business Competitiveness Program (Title VII of Pub. L. 100–656, 102 Stat. 3853, 3889). This Program specifies special procedures on the use of small business set-aside contracting for the procurement of services within the four designated industry groups. The designated groups are: Construction (SIC codes 1521–1542, SIC codes 1611–1629, and SIC codes 1711–1799); Engineering, Architectural, and Surveying and Mapping Services (SIC codes 8711, 8712, 8713, and part of SIC code 7389); Refuse Systems and Related Services (SIC code 4953 and part of SIC code 4212); and Non-nuclear Ship Repair (part of SIC code 3731). Over the period of 1988 to 1996, the Program included a provision that prohibited any change to the size standards for the designated industry groups. However, the Small Business Programs Improvement Act of 1996 included an amendment to the Program that repealed the prohibition placed upon the SBA from revising these industries' size standards (see Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Division D, Title I, Section 108, Pub. L. 104–208). In the accompanying legislative history, the Congress indicated that the SBA should take appropriate action to adjust the size standards for the designated industry groups, although no specific guidance was provided on how these size standards should be adjusted by the SBA. At this time, the SBA is proposing increases to the size standards for the general engineering services, architectural services, and the surveying and mapping services industries based on its review of economic and Federal procurement data for these industries. The size standards for the remaining designated industry groups are currently being reviewed by the SBA. A decision will be made in the near future if revisions to any of these industry size standards should be proposed. If so, a proposed rule will be published in the **Federal Register**.

Below is a discussion of the SBA's size standards methodology and the analyses leading to the proposed size standards. This is followed by a discussion of alternative size standards and the estimated economic impact that the proposed size standards, if adopted, would have on Federal Government contracting and the SBA's financial assistance programs.

### Size Standards Methodology

In considering the appropriateness of a size standard, the SBA evaluates the structural characteristics of an industry and the participation of small business in SBA programs. There are four factors describing the structural characteristics of an industry: average firm size; distribution of firms by size; start-up costs; and industry competition. While these four factors are generally considered the most important indicators of industry structure, the SBA will consider and evaluate all relevant information that would assist it in assessing an industry's size standard. Below is a brief description of the four industry structure factors.

1. Average firm size is simply total industry revenues (or number of employees) divided by the total number of firms. The SBA tends to set higher size standards for industries with an average firm size significantly higher than the average firm size of a group of related industries. SBA tends to set lower size standards in industries with a lower average firm size relative to a related group of industries.

2. The distribution of firms by size examines the proportion of industry sales, employment, or other economic activity accounted for by firms of different sizes within an industry. If the preponderance of an industry's output is by smaller firms, this would tend to support a low size standard. The opposite would be the case for an industry in which the distribution of

firms by size indicates that output is concentrated among the largest firms in an industry.

3. Start-up costs affect a firm's initial size because entrants into an industry must have sufficient capital to start a viable business. To the extent that firms in an industry have greater start-up capital requirements than firms in other industries, the SBA would be justified in considering a higher size standard. As a proxy measure for start-up costs, the industry's ratio between total payroll costs to sales is examined. An industry with a relatively low proportion of payroll cost to total sales as compared with the average proportion of other industries would tend to indicate that it is a capital intensive industry. For those types of industries, that circumstance suggests a relatively higher size standard.

4. As an indicator of industry competition, the SBA assesses competition within an industry as measured by the proportion or share of industry sales garnered by producers above a relatively large firm size. For purposes of the analysis in this proposed rule, the proportion of industry sales generated by the four largest firms in an industry is examined—generally referred to as the ''four-firm concentration ratio.'' To the extent that a significant proportion of economic activity within an industry is concentrated among a few relatively large producers, SBA tends to set higher size standards to assist firms in a broader size range to compete with firms that are dominant in the industry.

SBA has established ''anchor'' size standards of 500 employees for the manufacturing and mining industries and $5 million for nonmanufacturing industries. To the extent that the structural characteristics of an industry are significantly different from the average characteristics of industries with the anchor size standard, a size standard higher or lower than the anchor size standard may be supportable. For the industries under review in this proposed rule, the characteristics of the four industry factors for each industry were compared to the average characteristics of the nonmanufacturing industries with the anchor size standard of $5 million (hereafter referred to as the nonmanufacturing anchor group). If the characteristics of an industry are similar to characteristics of the nonmanufacturing anchor group, then the anchor size standard of $5 million is recommended. If, however, the industry characteristics are significantly different than the average characteristics of the nonmanufacturing anchor group, then a size standard above or below $5 million would be appropriate.

As indicated above, the impact of a proposed size standard on SBA's programs is evaluated in addition to industry structure to determine if small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment usually involves the calculation of the proportion or share of Federal contracts awarded to small businesses. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater would be the justification for a size standard higher than the existing size standard. In SBA's financial assistance programs, the volume of guaranteed loans within an industry and the size of firms obtaining loans are examined to assess whether the current size standard may be inappropriately restricting the level of financial assistance to firms in that industry.

**Evaluation of Industry Size Standards**

SBA analyzed the size standards for the, engineering, architectural and surveying and mapping services industries by comparing their industry characteristics with the average characteristics of the nonmanufacturing anchor group discussed above. The table below shows the characteristics for each industry and the average characteristics for the nonmanufacturing anchor group. A review of these factors leads to a recommended size standard for each industry.

INDUSTRY CHARACTERISTICS OF THE NONMANUFACTURING ANCHOR GROUP AND THE ENGINEERING, ARCHITECTURE AND SURVEYING SERVICES INDUSTRIES

| Category | Average firm size (millions) | Industry sales by size of firm | | | Payroll to sales (percent) | 4-firm concentration ratio (percent) | Share of gov't procurement (percent) |
|---|---|---|---|---|---|---|---|
| | | $5M (percent) | $10M (percent) | $25M (percent) | | | |
| Nonmanufacturing Anchor Group | $0.85 | 51.0 | 61.0 | 67.0 | 27.0 | 15.0 | N/A |
| Engineering Services | 1.83 | 25.9 | 32.7 | 40.8 | 41.8 | 10.9 | 17.7 |
| Architectural Services | 0.65 | 64.7 | 74.7 | 84.4 | 39.3 | 5.4 | 25.5 |
| Surveying Services | 0.28 | 88.5 | 90.7 | 93.6 | 39.2 | 3.5 | 25.8 |

**General Engineering Services (Part of SIC Code 8711)**

SBA proposes a size standard of $7.5 million for the general engineering services industry based on a review of the industry characteristics shown above, and based on the share of Federal procurements obtained by small business. The average firm size of engineering firms is over twice the average firm size of the nonmanufacturing anchor group, and supports a size standard moderately above the $5 million anchor size standard. The distribution of sales by firm size also supports a size standard significantly above the anchor size standard. Under this factor, the amount of sales obtained by engineering firms of $5 million and less in sales, $10 million and less in sales, and $25 million and less in sales, is significantly less than found for the anchor nonmanufacturing group. The industry factor of payroll to sales shows this industry to be more labor intensive than the nonmanufacturing anchor group. This factor indicates that start-up costs are relatively low and would support a size standard of not more than $5.0 million. The four-firm concentration ratio shows that engineering services is a highly competitive industry where the largest firms in the industry account for a low share of industry sales. This factor also supports a size standard at or below $5 million. However, the percent of Federal contract dollars awarded to small engineering firms during fiscal years 1995 and 1996 is a relatively small share of Federal contracting to small firms and supports a size standard much higher than the current $2.5 million level. Considering these factors in the aggregate, SBA believes that a size standard moderately higher than the anchor size standard is appropriate for engineering services. Accordingly, the

SBA proposes a size standard of $7.5 million for this industry. This size standard is above the standard that would have been established in 1994 for this industry if the SBA had had the authority to change it then based upon inflation since the time of the previous adjustment in 1984.

**Architectural Services (SIC Code 8712)**

A size standard of $5 million is being proposed for the architectural services industry. The average firm size of an architectural firm is similar to those of the average firm size of industries in the nonmanufacturing anchor group, and supports a size standard of $5 million. For the industry factor which looks at the distribution of firms, firms at the three specified size classes for architectural services obtained a moderately higher proportion of sales than similar sized firms within the nonmanufacturing anchor group. This factor supports a size standard at or slightly below $5 million. The industry factor of payroll to sales reveals that the architectural services industry is more labor intensive than the nonmanufacturing anchor group. This factor indicates that start-up costs are relatively low and would support a size standard of not more than $5.0 million. The four-firm concentration ratio is below the ratio for the nonmanufacturing anchor group, and supports a size standard at or below $5 million. A size standard higher than the current $2.5 million size standard is supportable in light of the relatively low share of Federal procurement dollars awarded to small architectural firms during fiscal years 1995–96. At the current size standard, small businesses account for 52 percent of industry sales but received only 25.5 percent of Federal contracting dollars. The SBA believes that since the industry characteristics are at or slightly below the characteristics of the nonmanufacturing anchor group, and since a wide disparity exists between industry sales to small business and the share of Federal contract awards, the $5 million anchor size standard is appropriate for this industry. This size standard is above the standard that would have been established in 1994 for this industry if the SBA had had the authority to change it then based upon inflation since the time of the previous adjustment in 1984.

**Surveying Services (SIC Code 8713)**

A size standard of $3.5 million is being proposed for the surveying services industry. The average firm size of a surveying firm is significantly below the average firm size of industries in the nonmanufacturing anchor group, and supports a size standard of less than $5 million. For the industry factor which looks at the distribution of firms, firms at the three specified size classes for surveying services obtained a significantly higher proportion of sales than similar sized firms within the nonmanufacturing anchor group. This factor also supports a size standard below $5 million. The industry factor of payroll to sales reveals that the surveying services industry is more labor intensive than the nonmanufacturing anchor group. This factor indicates that start-up costs are relatively low and would support a size standard of not more than $5.0 million. The four-firm concentration ratio is below the ratio for the nonmanufacturing anchor group, and supports a size standard at or below $5 million. Similar to architectural services, there exists a wide disparity between the value of Federal contracts awarded to small surveying firms and industry sales produced by these firms. Small surveying firms account for approximately 80 percent of total industry sales but received only 26.8 percent of Federal contracting dollars spent for surveying. The SBA believes that due to the discrepancy between the small business share of total industry sales and Federal Government contracts, an increase to the current size standard is warranted, but one which is less than the nonmanufacturing anchor size standard. Based on these considerations, the SBA is proposing a size standard of $3.5 million. This size standard is consistent with the standard that would have been established in 1994 for this industry if the SBA had had the authority to change it then based upon inflation since the time of the previous adjustment in 1984.

**Mapping Services (Part of SIC Code 7389)**

The size standard of $3.5 million is being retained for mapping services included within SIC code 7389, Business Services, Not Elsewhere Classified. Surveying and mapping are closely related activities, and the SBA believes that mapping services should have the same size standard as proposed in this rule for surveying services. In its revision to the definition of industries as published in April of 1997, the Office of Management and Budget recognized the closely related nature of these two services by creating a new industry under the North American Industry Classification System titled ''Surveying and Mapping'' (see 62 FR 17288, April 9, 1997). This industry is constructed by combining the mapping services activities within SIC code 7389 with all of the surveying services activities within SIC code 8713. In addition, the SBA has found that Federal contracts for mapping services have been classified under both SIC codes 7389 and 8713. Between 1995 and 1996, 61 percent of mapping services contracts were classified under SIC code 7389 and 39 percent were classified under SIC code 8713. Since surveying and mapping services are closely related, the SBA is proposing a common size standard for these two services.

**Dominant in Field of Operation**

Section 3(a) of the Small Business Act defines a small concern as one that is independently owned and operated, not dominant in its field of operation, and meets detailed definitions or standards established by the Administrator of the SBA. In lieu of a separate small business eligibility criterion, the SBA includes as part of its evaluation of a size standard whether a concern at or below a recommended size standard would be considered dominant in its field of operation. This assessment generally takes into consideration the market share of firms at a recommended size standard or other factors that may reveal if a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that at the recommended size standards of $7.5 million for general engineering services, $5 million for architectural services, and $3.5 million for surveying and mapping industries, no firm at or below those levels would be of a sufficient size to be dominant in its field of operation. Firms at the proposed size standards generate less than 0.25 percent of total industry sales. This level of market share effectively precludes any ability by a firm to exert a controlling effect on the industry.

**Alternative Size Standards**

The SBA considered two alternative size standards for these industries. The first alternative considered was retaining a common size standard for all three industries. The general engineering, architectural, and surveying services industries fall under a three-digit industry group, and presently have a common size standard of $2.5 million. The $5 million anchor size standard would be an appropriate standard if a common size standard were believed to be more suitable for these three industries. When combined together, the industry characteristics are similar to the average characteristics of the nonmanufacturing anchor group. As

presented in the industry evaluations, significant differences exist between the structure of the engineering industry, the architectural, and the surveying and mapping industries. The SBA believes that these differences are of significant magnitudes to warrant different size standards among the three industries.

The second alternative considered was adjusting these size standards only for inflation similar to the adjustment applied to most receipts-based size standards in 1994 (61 FR 3280). Under this alternative, the $2.5 million size standard would be increased to $3.5 million. The SBA believes, however, that these industries should be thoroughly reviewed to determine the most appropriate size standard rather than applying a simple inflation adjustment. Moreover, the SBA believes that the unique history of these size standards and the special attention they have received under the Small Business Competitiveness Program compel a closer level of scrutiny for these industry size standards than for most other industries.

The SBA welcomes public comments on the proposed size standards for the general engineering, architectural, surveying and mapping services industries. Comments on any of the alternatives to the proposal, including those discussed above, should present the reasons why it is preferable to the proposed size standards.

**Compliance With Executive Orders 12612, 12788, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 301 et seq.)**

The SBA certifies that this rule, if adopted, would be a significant rule within the meaning of Executive Order 12866. Immediately below, the SBA has set forth an initial regulatory impact analysis of this proposed rule.

*(1) Description of Entities to Which the Rule Applies*

SBA estimates that 2,215 additional firms would be considered small as a result of this rule, if adopted. These firms would be eligible to seek available SBA assistance provided they meet other program requirements. Many of these firms probably had small business status in 1986 when these size standards were established at $2.5 million, but have since lost eligibility because of general price increases. Of the 2,215 additional firms gaining eligibility, 1,747 operate in engineering services, 428 operate in architectural services while 40 operate in surveying services. Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate $8.5 billion in annual sales, while total sales in these industries are $77.5 billion. Of the $8.5 billion for newly eligible firms, $6.9 billion are in engineering services, $1.4 billion are in architectural services and $50 million are in surveying services.

*(2) Description of Potential Benefits of the Rule*

The most significant areas of benefits to businesses which could obtain small business status as a result of adoption of this rule is eligible for the Federal Government's procurement programs and the SBA's Business Loan Program. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $167 million per year under the Small Business Set-aside Program, the 8(a) Program, or unrestricted contracts. Also, the additional competition for many of these procurements would likely result in a lower price to the Government for procurements which have been set aside, but the SBA is not able to quantify this benefit. Under the SBA's 7(a) Guaranteed Loan Program, it is estimated that $9.2 million in new loans could be made to these newly defined small businesses and an additional $2.7 million in loans under the Certified Development Company (504) Program.

*(3) Description of Potential Costs of the Rule*

The changes in size standards as they affect Federal procurement is not expected to add any significant costs to the Government. As a matter of policy, procurements may be set aside for small business or under the 8(a) Program only if awards are expected to be made at reasonable prices. Similarly, the rule should not result in any added costs associated with the 7(a) and 504 loan programs. The amount of lending authority SBA can make or guarantee is established by appropriation. The competitive effects of size standard revisions differ from those normally associated with other regulations which typically burden smaller firms to a greater degree than larger firms in areas such as prices, costs, profits, growth, innovation and mergers. The change to size standards is not anticipated to have any appreciable affect on any of these factors, although small businesses or 8(a) firms much smaller than the size standard for their industries may be less successful in competing for some Federal procurement opportunities due to the presence of larger, newly defined small businesses. On the other hand, with more and larger small businesses competing for small business set-aside and 8(a) procurements, contracting agencies are likely to increase the overall number of contacting opportunities available under these programs. In addition, the new size standards, if adopted, would not impose a regulatory burden because they do not regulate or control business behavior.

*(4) Description of the Potential Net Benefits From the Rule*

Based on the above discussion, SBA believes that, because the potential costs of this rule are minimal, the potential net benefits would be approximately equal to the total potential benefits. Most of the impact of this rule will appear in the Federal procurement area.

*(5) Description of Reasons Why This Action is Being Taken and Objectives of Rule*

The SBA has provided in the supplementary information a statement of the reasons why these new size standards should be established and a statement of the reasons for and objectives of this rule.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA certifies that this rule would not impose new reporting or recordkeeping requirements, other than those required of SBA. For purposes of Executive Order 12612, the SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

**List of Subjects in 13 CFR Part 121**

Government procurement, Government property, Grant programs—business. Loan programs—business. Small business.

Accordingly, part 121 of 13 CFR is proposed to be amended as follows:

**PART 121—[AMENDED]**

1. The authority citation of part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c), and 662(5).

**§ 121.201 [Amended]**

2. In § 121.201, in the table ''Size Standards by SIC Industry,'' under the heading DIVISION I—SERVICES, is amended by revising the entries corresponding to 8711, 8712, and 8713 to read as follows:

| | |
|---|---|
| 8711 Engineering Services | $7.5 |
| Military and Aerospace Equipment and Military Weapons | 20.0 |
| Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992 | 20.0 |
| Marine Engineering and Naval Architecture | 13.5 |
| 8712 Architectural Services (Other than Naval) | 5.0 |
| 8713 Surveying Services | 3.5 |

Dated: December 23, 1997.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 98–2609 Filed 2–2–98; 8:45 am]

**BILLING CODE 8025–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[WV026–6004; FRL–5957–7]**

## Approval and Promulgation of Air Quality Implementation Plans; Approval Under Section 112(l) of the Clean Air Act; West Virginia; Revisions to Minor New Source Review and Addition of Minor Operating Permit Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve in part and disapprove in part a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This SIP revision changes portions of West Virginia's minor new source review permit program and establishes new provisions for permitting existing stationary sources. This action proposes to disapprove a new exemption from minor new source review for sources which have been issued permits pursuant to the State's operating permits program developed pursuant to Title V of the Clean Air Act (''the Act''). This action also proposes to disapprove the provisions governing the issuance of temporary construction and modification permits. This action proposes to approve all other provisions of West Virginia's minor new source review and existing stationary source operating permit program. The intended effect of this action is to propose approval of those State provisions which meet the requirements of the Clean Air Act, and disapprove those State provisions which do not. This action is being taken under section 110 of the Clean Air Act. EPA is also proposing approval of West Virginia's minor new source review and existing stationary source operating permit program pursuant to Section 110 of the Act for the purpose of creating federally enforceable permit conditions for sources of criteria air pollutants. EPA is also proposing approval of West Virginia's minor new source review and existing stationary source operating permit program under section 112(l) of the Clean Air Act in order to extend the Federal enforceability of State permits to include hazardous air pollutants (HAPs).

**DATES:** Comments must be received on or before March 5, 1998.

**ADDRESSES:** Comments may be mailed to Kathleen Henry, Chief, Permit Programs Section, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

**FOR FURTHER INFORMATION CONTACT:** Jennifer M. Abramson,(215) 566–2066, or by e-mail at Abramson.Jennifer@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Minor New Source Review*

Section 110(a)(2)(C) of the CAA requires every SIP to ''include a program for the * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved.'' EPA's regulations now codified at § § 51.160 through 51.164 have since the early 1970s required a new source review (NSR) program, and one is included in every state implementation plan (SIP). This requirement predates and is separate from the requirement also set forth in section 110(a)(2)(C) that States have ''major'' NSR permitting programs under part C for the prevention of significant deterioration of air quality (PSD) and part D for nonattainment area permitting (nonattainment NSR) of title I.

*B. Federally Enforceable State Operating Permit Programs*

Many stationary source requirements of the CAA apply only to ''major sources''. Major sources are those sources whose emissions of air pollutants exceed threshold emissions levels specified in the Act. To determine whether a source is major, the Act focuses not only on a source's actual emissions, but also on its potential emissions. Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the potential to emit major amounts of air pollutants. However, in situations where unrestricted operation of a source would result in a potential to emit above major-source levels, such sources may legally avoid program requirements by taking federally-enforceable permit conditions which limit emissions to levels below the applicable major source threshold, becoming what is termed a ''synthetic minor'' source. [1]Federally-enforceable permit conditions, if violated, are subject to enforcement by the Environmental Protection Agency (EPA) or by citizens in addition to the state or local agency. On June 28, 1989, EPA published guidance on the basic requirements for EPA approval of (non-title V) federally enforceable state operating permit programs (FESOPPs). See 54 FR 27274. Permits issued pursuant to such programs may be used to establish federally enforceable limits on a source's potential emissions to create ''synthetic minor'' sources.

*C. Federally Enforceable Permit Conditions for Hazardous Air Pollutants*

Section 112(l) of the Act provides EPA with the authority to approve state programs which regulate sources of HAPs, analogous to the section 110 authority provided to EPA for sources of criteria air pollutants. EPA believes it

[1] Several other mechanisms for major sources to become ''synthetic minors'' and legally avoid major source program requirements exist. For more information, refer to the memorandums entitled ''Extension of January 25, 1995 Potential to Emit Transition Policy'' (August 28, 1996), ''Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit'' (January 22, 1996), ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)'' (January 25, 1995), and ''Approaches to creating Federally-Enforceable Emissions Limits'' (November 3, 1993).

has the authority under section 112(l) to approve state programs for the purpose of making permit conditions involving HAPs federally enforceable. EPA believes it is consistent with the intent of section 112 of the CAA for states to provide mechanisms through which sources may avoid classification as major sources by obtaining federally enforceable limits on potential to emit. Other available mechanisms for sources of hazardous air pollutants to avoid classification as major sources are available (See footnote 1).

## II. Summary and Analysis

On August 26, 1994, the West Virginia Department of Environmental Protection (WVDEP) submitted for EPA approval a revision to the West Virginia State Implementation Plan (SIP) regarding the issuance of minor new source review and federally enforceable state operating permits. This SIP revision, entitled 45CSR13– ''Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation'', amends and replaces 45CSR13 ''Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation'', effective June 1, 1974, which was approved into the SIP November 10, 1975. On September 5, 1996, the West Virginia Department of Environmental Protection (WVDEP) submitted a letter clarifying that West Virginia also requests EPA approval under CAA section 112(l) of the 45CSR13 program submitted on August 26, 1994.

In order to evaluate the approvability of West Virginia's submittal as a SIP revision, the changes from the SIP approved version of 45CSR13 must meet all applicable requirements (procedural and substantive) of 40 CFR part 51 and the CAA. EPA has reviewed this SIP revision package in accordance with the completeness criteria described in section 110(k)(1) and 40 CFR part 51, appendix V and has found it to be administratively and technically complete. The technical support document (TSD) prepared in support of this proposed action contains a detailed analysis of West Virginia's SIP submittal. The formal SIP submittal, completeness determination and TSD are available for review as part of the public docket at the times and locations listed in the **ADDRESSES** section of this document.

EPA's requirements for SIP approval applicable to minor new source review permitting programs are established in part 51, subpart I—Review of New Sources and Modifications, § § 51.160. through 51.164. Other sections of subpart I, applicable only to new sources and modifications which are major, do not apply and are thus not addressed in this analysis. [2]West Virginia's SIP submittal must also satisfy the criteria discussed in the June 28, 1989 **Federal Register** (54 FR 27274) in order for EPA to consider operating permits issued pursuant to 45CSR13 to be federally enforceable on a permanent basis. [3]These same criteria, in conjunction with the statutory requirements of section 112(l)(5) of the Act, are used to evaluate the approvability of the 45CSR13 program for the purpose of creating federally enforceable permit conditions for sources hazardous air pollutants (HAPs).

### *A. Minor New Source Review*

The SIP revision represents comprehensive changes from the SIP approved version of West Virginia's minor new source review program. For purposes of efficiency, the discussion and analysis of these changes are grouped according to the following categories: applicability, permit issuance procedures (including public participation), and program features and nomenclature.

#### 1. Applicability

West Virginia's submittal exempts constructions, modifications, and relocations which are subject to the major preconstruction permit requirements of West Virginia's 45CSR14 (PSD) or 45CSR19 (non-attainment NSR) programs from minor new source review permitting requirements. The purpose of this exemption is to avoid duplicative permitting obligations for the construction and relocation of new major sources, and for sources which undergo major modifications since such activities are subject to the State's major new source review permitting programs. The submittal also exempts a category of sources referred to as ''Indirect Affected sources'' from West Virginia's minor new source review program. Indirect sources are facilities such as parking lots, highway projects, and airport constructions or expansions which attract or potentially attract mobile sources of pollution. The Federal requirement for state SIPs to include ''indirect source review programs'' has been removed (see CAA section 110(a)(5)). West Virginia's submittal also attempts to exempt sources which have been issued operating permits pursuant to Title V of the Clean Air (herein after referred to as ''Title V sources'') from minor new source review. If approved into the SIP, such an exemption will apply to virtually all major sources in West Virginia. Although constructions and modifications at Title V sources are subject to the permit revision procedures of West Virginia's Title V permitting program, such procedures do not replace the Federal requirements for new source review (major or minor) applicable to such activities. The effect of this exemption is to allow constructions of new non-major sources and non-major modifications at Title V sources to proceed without considering the impact of such activities on the State's control strategy (including applicable PSD increments) or ability to attain or maintain national ambient air quality standards (NAAQS). Accordingly, West Virginia is unable to prevent activities at Title V sources which result in violations of the State's control strategy, or interfere with attainment or maintenance of the NAAQS, a fundamental requirement of new source review programs.

In addition to the categorical exemptions discussed above, West Virginia's submittal changes applicability to minor new source review in other ways. The program uses the terms ''stationary source'' and ''modification'' to define the scope of activities which are subject to review. Both these terms are defined with emissions levels determining what qualifies as either a ''stationary source'' or a ''modification''. Unless subject to an emissions control rule promulgated by the Commission, sources with emissions or potential emissions below the specified ''stationary source'' emissions levels are not considered to be ''stationary sources''. West Virginia employs a (six) 6 lb/hr threshold for sources of VOC or any of the pollutants for which the State has promulgated an ambient air quality standard (SO2, PM10, NO2, CO, O3 and non-methane

[2] West Virginia has developed separate rules to meet the requirements of subpart I applicable to major sources, namely, 45CSR14 – ''Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration'' and 45CSR19 – ''Requirements for Pre-Construction Review, Determination of Emissions Offsets for Proposed New or Modified Sources of Air Pollutants and Emission Trading for Intrasource Pollutants''.

[3] In the memorandums entitled ''Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit'' (January 22, 1996) and ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)'' (January 25, 1995), EPA announces a temporary recognition of practically enforceable state limits on potential emissions as being federally enforceable.

hydrocarbons). The 6 lb/hr size threshold for stationary sources, a component of West Virginia's SIP since the 1970's, now also applies to sources of VOCs, a category of pollutants which are regulated as ozone precursors. For sources of hazardous or toxic air pollutants (HAPS/TAPS), West Virginia employs a new threshold equal to or above levels employed in the State's toxic emissions control rule(45CSR27). These levels range from (eight-tenths) 0.8 lbs/yr (Beryllium) to (ten thousand)10,000 lbs/yr (Allyl Chloride, Trichloroethylene). Lead and lead compounds are defined as HAPS/TAPS with a (twelve thousand) 12,000 lbs/year threshold.

Accordingly, West Virginia's minor new source review program captures all non-major sources which are subject to State emission control rules, and other non-major sources with potential or actual emissions above established thresholds. Similarly, physical or operational changes at stationary sources which result in emissions increases below the ''modification'' emission levels are not considered to be ''modifications''. Where the SIP-approved version of 45CSR13 contained no such emission levels to define modifications, West Virginia's submittal employs a modification threshold of (two) 2 lbs/hr or (five) 5 tons/year or more of any pollutant which is not a toxic or hazardous air pollutant. For sources with potential emissions of hazardous or toxic air pollutants equal to or greater than the levels specified in West Virginia's toxic emissions control rule (45CSR27), any change which results in an emissions increase is considered to be a modification and subject to minor new source review. Changes at sources with potential emissions below the 45CSR27 levels are also considered to be modifications if the emissions increase would result in total emissions at the source above the 45CSR27. Regardless of the pollutants involved, the program requires changes which result in emission increases below the modification emissions thresholds to be reported to the State. On a case-by-case basis, the State may determine that such activities must also be permitted. This notification requirement for modifications provides an additional layer of protection which will enable the State to determine whether small changes at sources will interfere with the attainment and maintenance of the NAAQS, or violate the control strategy (including PSD increments).

Similar to the Federal definition of the term ''major modification'' in 40 CFR part 51, the definition of ''modification'' in 45CSR13 exempts certain types of actions. As a new exemption, section 2.18.d.A. precludes from being considered a modification the installation or replacement of air pollution control equipment if the new equipment is at least as effective as the equipment replaced and no new air pollutant is discharged from its installation. EPA believes that this exemption employs adequate safeguards for purposes of West Virginia's minor new source review program. West Virginia's program uses the terms ''major stationary source'' and ''major modification'' to establish the upper limits of the scope of the 45CSR13 program. Identical terms are used to determine applicability in West Virginia's major pre-construction permitting programs, 45CSR14 (PSD) and 45CSR19 (non-attainment NSR). [4]Since 45CSR13 exempts construction and modification-related activities which are subject to either 45CSR14 or 45CSR19, it is critical that these programs define ''major stationary source'' and ''major modification'' consistently to avoid confusion when determining which pre-construction permitting program applies in a given instance. [5]The 45CSR13 definition of the term ''Major modification'' references the definitions continued in 45CSR14 and 45CSR19 and thus inherently satisfies EPA's concern about definition parity. While the 45CSR13 definition of ''Major stationary source'' is consistent with the definitions found in 45CSR14 and 45CSR19 in terms of emissions thresholds, the 45CSR13 definition does not delineate when fugitive emissions need to be included as is done in the major permit program rules. Without such a distinction, the 45CSR13 definition could be interpreted to require fugitive emissions to be included in all cases so that certain sources of fugitive emissions are ''major sources'' under 45CSR13 but not under 45CSR14 and 45CSR19. This presents a consistency problem since such sources would be exempt from all new source review requirements. To address this issue, West Virginia submitted a written clarification indicating that, with respect to the inclusion of fugitive emissions in major stationary source determinations, the definition of ''Major stationary source'' in 45CSR13 will be interpreted consistently with 45CSR14 and 45CSR19.

2. Permit Issuance Procedures

The procedures for permit issuance applicable to the issuance of construction, modification, relocation, and existing stationary source operating permits have been enhanced to satisfy the requirements of § 51.161 for new source review programs and the criteria set forth by EPA on June 28, 1989 (57 FR 27274) for federally enforceable state operating permit programs (FESOPPs). Other changes affecting permit issuance include the addition of new provisions for conducting completeness evaluations of permit applications, revised deadlines for permit issuance, and the removal of outdated source registration provisions. Provisions allowing sources to construct or modify by default have also been removed.

The revised procedures also allow the Chief to issue temporary permits which authorize experimental product or process changes for up to six (6) months (which may be extended in writing up to twelve (12) additional months). In acting to issue or deny an application for a temporary permit, the Chief is required to provide a fifteen (15) day public comment period on the temporary permit application.

EPA recognizes that, in some cases, a full-scale six (6) month minor new source review permit issuance process for proposed experimental product or process changes may be impracticable and/or unnecessarily burdensome. EPA also recognizes that states should have the ability to limit the public participation for certain minor new source permitting actions. Since states can exempt certain activities from minor NSR based on de minimis or administrative necessity grounds in accordance with the criteria set forth in *Alabama Power Co.* V. *Costle*, 636 F.2d 323(D.C. Cir. 1979), it follows that states should also be able to provide partial or full exemption from the full public process requirements of § 51.160(e). Any such limitation on the full public participation requirements of § 51.160(e), however, should be applied consistent with the environmental significance of the activity. [6]Although

[4] The definition of the terms ''major stationary'' source and ''major modification'' in West Virginia's 45CSR14 (PSD) and 45CSR19 (non-attainment NSR), must be consistent with the federal definitions found in section 40 CFR 51.165 (non-attainment New Source Review(NSR)) and § 51.166 (Prevention of Significant Deterioration (PSD)).

[5] The issue of consistency of terms is addressed in the proposed revisions to title 40 of the Code of Federal Regulations (40 CFR) parts 51, 70 and 71 published in the Federal Register on August 31, 1995 (see 60 FR 45564). In this document, EPA proposes rulemaking to clarify that all of the terms used in § § 51.160 through 51.164 have the same meaning as provided elsewhere in subpart I of part 51, or in the Act.

[6] On August 31, 1995, EPA proposed a new paragraph (c) in § 51.161 to clarify that, except for certain specified activities; state programs may vary procedures for, and timing of, public review in light of the environmental significance of the activity (see 60 FR 45564).

temporary permits are issued only in specific instances and for limited periods of time, such conditions do not characterize situations of an inherently less environmentally significant nature. The effect of the temporary permitting procedure is that environmentally significant constructions or modifications may be authorized on a temporary basis without adequate opportunity for public participation. Without a correlation to the environmental significance of the activity, EPA cannot consider the minimum public process afforded, fifteen (15) days, to be adequate in all instances.

3. Program Features and Nomenclature

The revisions to 45CSR13 include new administrative provisions for issuing general permits authorizing construction or relocation of a category of sources by the same operator, or involving the same or similar precesses or pollutants, in accordance with the terms and conditions specified in the general permit. The revised 45CSR13 also establishes new provisions allowing for permit transfers after the Chief determines that the proposed permittee has all necessary permit responsibility. The new permittee must certify that a complete copy of the permit application and permit has been reviewed, and that all terms and conditions in the permit and operating parameters contained in the application will be adhered to. The Chief must also be provided a written agreement between the existing and new permittee with regard to the specific transfer date and the extent of permit responsibility between them. The revised 45CSR13 also includes a new provision for permit cancellation requiring permit holders to submit requests for cancellation in writing. The cancellation provision specifies that no permit cancellation shall become effective until the permittee and EPA have been given at least 30 days written notice. The cancellation provision further specifies that permit cancellation will not excuse any violation of permit terms or conditions prior to the effective date of the permit cancellation.

The revisions to 45CSR13 include the addition of several new terms and the modification of existing terms which are defined in a manner consistent with the program's proper implementation and with the corresponding definitions of § § 51.165 and 51.166 applicable to major new source review permitting programs. The revisions also delete several outdated terms such as ''indirect affected source''. These changes update the program—s definitions consistent with the current terminology employed by the Act and with EPA's regulations.

*B. Federally Enforceable State Operating Permit Programs*

On June 28, 1989 EPA amended the definition of ''federally enforceable'' to clarify that terms and conditions contained in state-issued operating permits are federally enforceable provided that the state's operating permits program is approved into the SIP under section 110 of the CAA as meeting certain criteria, and provided that the permit conforms to the requirements of the approved program (54 FR 27282). The five criteria set forth by EPA require state programs to: (a) Be approved into the SIP; (b) impose legal obligations to conform to the permit limitations; (c) provide for limits that are enforceable as a practical matter; (d) issue permits through a process that provides for review and an opportunity for comment by the public and by EPA; and (e) ensure that there will be no relaxation of otherwise applicable Federal requirements. West Virginia's revised 45CSR13 includes a new ''opt-in'' provision where sources not otherwise required to be permitted for purposes of new source review may voluntarily apply for an existing stationary source operating permit. This provision was added so that 45CSR13 could serve dually as West Virginia's minor new source review program and as its FESOPP. The procedures for issuing existing stationary source operating permits under 45CSR13 are identical to those followed for issuing minor new source review permits. West Virginia's revised 45CSR13 program meets the June 28, 1989 criteria by ensuring that permit terms are permanent, quantifiable, and practically enforceable and by providing adequate notice and comment to both EPA and the public. However, since such requirements must be satisfied on a permit by permit basis, EPA may deem individual permits which contain terms and conditions that are not quantifiable or practically enforceable not ''federally enforceable''. Regarding ''permanence'', section 11.3 of West Virginia's rule provides that the issuance of a Title V operating permit will operate to revoke an existing stationary source operating permit. EPA expects that many of the existing stationary source operating permits issued are to sources which are seeking to avoid Title V permitting obligations. For these sources, the ''automatic revocation'' provision will not be triggered. However, some sources may rely on limitations on potential emissions established in existing stationary source operating permits to avoid other ''major source'' program requirements such as major NSR, PSD, or Title III MACT standards and will trigger the ''automatic revocation'' provisions. For these sources, the superseding Title V permit will need to address such limitations as applicable requirements (similar to how minor NSR permit conditions are addressed in the Title V permit), or else place the source at risk for violating applicable ''major source'' program requirements. EPA is assured that sources that obtain limitations on potential emissions in existing stationary source operating permits will keep such limitations in effect, so as to never be in violation of ''major source'' permitting or other program requirements. EPA interprets section 11.3 to authorize supersession of existing stationary source operating permits only, and not construction, modification or relocation permits. The TSD provides a thorough analysis of the West Virginia's 45CSR13 program against EPA's June 28, 1989 criteria.

*C. Federally Enforceable Permit Conditions for Hazardous Air Pollutants*

West Virginia's revised 45CSR13 defines the term ''regulated air pollutant'' to include nineteen (19) hazardous/toxic pollutants which are regulated by the State's air toxic rule (45CSR27), and ''..any other pollutants subject to an emissions standard promulgated by the Commission including mineral acids in 45CSR7.'' West Virginia has adopted specific regulations which incorporate Federal National Emissions Standards for Hazardous Air Pollutants (NESHAPS) promulgated at 40 CFR parts 61 and 63 by reference. West Virginia updates these authorities in State regulations on an annual basis. EPA interprets the 45CSR13 definition of ''regulated air pollutant'' to provide the necessary authority for 45CSR13 permits to contain conditions on HAPs which are regulated by 40 CFR parts 61 and 63 NESHAPS and which have been adopted into West Virginia's regulations. On September 5, 1996, the West Virginia Department of Environmental Protection (WVDEP) submitted a letter clarifying that West Virginia also requests EPA approval under section 112(l) of the 45CSR13 program submitted on August 26, 1994.

EPA approval of 45CSR13 program under section 112(l) of the Act is necessary to extend West Virginia's authority under section 110 of the Act to include the authority to create federally enforceable limits on the potential to emit HAPs. EPA has determined that the five approval criteria for approving FESOPPs into the

SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving programs under section 112(l). Although the June 28, 1989 notice did not address HAPs, this is because it was written prior to the 1990 amendments to section 112 of the CAA. EPA believes that the use of the same criteria for evaluating programs for both criteria and hazardous pollutants is appropriate since the approval criteria are not based or dependent on pollutant, but on general program elements which must be present for the program to be deemed minimally approvable by EPA. Hence, the five criteria discussed above are applicable to FESOPP approvals under section 112(l) as well as under section 110.

In addition to meeting the criteria discussed above, state programs must meet the statutory criteria for approval under section 112(l)(5) of the CAA. This section allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any Section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with Section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA. EPA plans to codify the approval criteria for programs limiting the potential to emit of HAPs through amendments to Subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262). EPA currently anticipates that these criteria, as they apply to FESOPP programs, will mirror those set forth in the June 28, 1989 notice, with the addition that the State's authority must extend to HAPs instead of or in addition to VOC's and PM10. The EPA currently anticipates that FESOPP programs that are approved pursuant to Section 112(l) prior to the planned Subpart E revisions will have had to meet these criteria, and hence will not be subject to any further approval action.

EPA believes it has the authority under section 112(l) to approve programs to limit potential to emit of HAPs directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of Title V permit applications, the EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue.

West Virginia's satisfaction of the criteria published in the **Federal Register** of June 28, 1989, has been discussed above. In addition, West Virginia's 45CSR13 program meets the statutory criteria for approval under 112(l)(5). EPA believes West Virginia's 45CSR13 program contains adequate authority to assure compliance with section 112 requirements since it does not provide for waiving any section 112 requirement(s). Sources would still be required to meet section 112 requirements applicable to non-major sources. Regarding adequate resources, West Virginia subjects sources required to be permitted under 45CSR13 to the State's fee regulation, 45CSR22 ''Air Quality Fee Program''. Furthermore, EPA believes that West Virginia's 45CSR13 program provides for an expeditious schedule for assuring compliance because it allows a source to establish a voluntary limit on potential to emit and avoid being subject to a Federal Clean Air Act requirement applicable on a particular date. Nothing in West Virginia's 45CSR13 program would allow a source to avoid or delay compliance with a Federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, West Virginia's 45CSR13 program is consistent with the objectives of the Section 112 program because its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. EPA believes that this purpose is consistent with the overall intent of section 112. The Technical Support Document contains a more thorough analysis of West Virginia's 45CSR13 program against the statutory criteria for approval under 112(l)(5).

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

## III. Proposed Action

EPA is proposing to disapprove the exemption from minor new source review for sources issued Title V permits as such an exemption does not comport with the Federal requirements of 40 CFR 51.160. EPA is also proposing to disapprove the new provisions governing the issuance of temporary construction or modifications permits as such provisions do not satisfy the Federal requirements for public participation of 40 CFR 51.161. EPA is proposing to approve all other portions of 45CSR13 as a revision to the West Virginia SIP. Such an action will enable EPA to approve and make federally enforceable the many updates and improvements from the SIP approved version of the program, and at the same time prevent serious relaxations of the SIP related to the program's scope and public participation requirements.

EPA is proposing to approve 45CSR13 under section 110 of the Act because the program meets the June 28, 1989 approval criteria for federally enforceable state operating permit programs. For this reason and because the program meets the statutory requirements of section 112(l)(5) of the Act, EPA is also proposing approval of West Virginia's 45CSR13 program pursuant to section 112(l) of the Act for the purpose of limiting the potential to emit of HAPs. Such an action will confer Federal enforceability status to existing stationary source operating permits which are issued to sources of criteria pollutants or HAPs in accordance with 45CSR13 and the five June 28, 1989 criteria, including permits which have been issued prior to EPA's final action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory authority.

## IV. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare

a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new requirements.

*C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove this revision to the West Virginia SIP for minor sources will be based on whether it meets the requirements of section 110(a)(2)(A)–K) and of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: January 22, 1998.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

[FR Doc. 98–2615 Filed 2–2–98; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[MI55–01–7263; FRL–5958–6]**

## Approval and Promulgation of State Implementation Plan; Michigan; Site-Specific SIP Revision for Leon Plastics, Inc.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On September 24, 1996, the Michigan Department of Environmental Quality submitted a revision to the State's Ozone State Implementation Plan. This submittal requested federal approval of an alternative to the State's federally approved R 336.632 Emission of volatile organic compounds from existing automobile, truck, and business machine plastic part coating lines or ''Rule 632.'' The Environmental Protection Agency (EPA) is proposing to disapprove this alternative to the generally applicable Rule 632 because it is not consistent with the Clean Air Act and applicable EPA policy.

**DATES:** Comments on this proposed rule must be received on or before March 5, 1998.

**ADDRESSES:** Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:** Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6960.

**SUPPLEMENTARY INFORMATION:**

### I. State Submittal

On September 7, 1994, EPA federally approved Michigan's R 336.632 Emission of volatile organic compounds from existing automobile, truck, and business machine plastic part coating lines or ''Rule 632.'' Michigan had adopted this rule to fulfill the State's requirement for volatile organic compound (VOC) Reasonably Available Control Technology (RACT) for the purposes of attaining and maintaining the national ambient air quality standard for ozone.

Rule 632 limits the VOC content of air dried interior automotive plastics coatings to 5.0 lbs of VOC per gallon of coating, minus water. This limit reflects the suggested VOC content limit found in EPA's Alternative Control Techniques (ACT) document for this source category (''Surface Coating of Automotive/Transportation and Business Machine Plastic Parts'').

The vinyl coating operations performed by Leon Plastics, Inc. are subject to Michigan's Rule 632 and to the 5.0 VOC lb per gallon limit.

On September 24, 1996, the Michigan Department of Environmental Quality (MDEQ) submitted to EPA a revision to the State's Ozone State Implementation Plan. This submittal requested federal approval of an alternative to the State's Rule 632 that applies to Leon Plastics.

Leon Plastics has been issued a permit (Permit to Install 94–87B) by the State of Michigan that allows this facility to comply with the applicable limit by allowing both cross-line average of two coating lines, based on a 30 day average. Before this compliance methodology can become federally enforceable, the

EPA must review it and approve it into the Michigan State Implementation Plan (SIP). Until such an approval is published in the **Federal Register**, the general provisions of Rule 632 (including the 5.0 lb/gallon limit on a line-by-line basis) are applicable to the processes at Leon Plastics on the Federal level.

The State of Michigan, on behalf of Leon Plastics, Inc., has submitted to EPA a site-specific SIP revision requesting that the State's permit now be approved into the Michigan SIP.

## II. Review of State Submittal

While the submittal made by MDEQ does contain enough background information that would seem to justify a site-specific alternative RACT, the request for allowing this facility to comply with the applicable limit by allowing both cross-line average of two coating lines, based on a 30 day average is not acceptable.

The submittal contains information that indicates that the limit that applies to the Finish Room operations may be inappropriate because special consideration was not given for flexible interior vinyl parts in EPA's ACT or in Michigan Rule 632. In EPA's ACT and under Rule 632 these products fall into the more generic category of ''air dried interior automotive plastics coatings.''

An analysis of add-on controls was also included and this analysis showed the cost of these controls to be unreasonable on a dollars per ton of VOC removed basis.

Because the VOC content limit found in the federally enforceable rule may be inappropriate and because add-on controls may be unreasonable, an alternative RACT for the Finish Room seems justified. However, the request for both a cross-line average and an extended averaging time is not approvable.

The cross-line average may be acceptable under these conditions, but the extended averaging time is not warranted with or without the cross-line average. It is EPA's policy to allow greater than daily averaging times only when recordkeeping cannot be performed on a daily basis (see memo dated January 20, 1987 ''Determination of Economic Feasibility'' from G.T. Helms, Chief of EPA's Control Programs Operations Branch). Unless recordkeeping presents an insurmountable problem, adjustments should be made in the RACT number, not in the averaging time. Since this is not the case for Leon Plastics and records can be kept to demonstrate compliance, or noncompliance, with the VOC content limit, this submittal cannot be approved. Furthermore, pursuant to the Seventh Circuit's decision in *Bethlehem Steel Corp.* v *Gorsuch*, 742 F. 2d 1028 (7th Cir. 1984), EPA is prohibited from disapproving, in part approving, in part any submission if the result would be to create a law that the State legislature would not have enacted. Therefore, because the extended average time is not approvable and cannot be separated from the cross-line averaging, EPA is proposing to disapprove the entire submission.

## III. Proposed Rulemaking Action

To determine the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of section 110 and part D of the Act. In addition, EPA has reviewed the Michigan submittal in accordance with EPA policy guidance documents, including: EPA's policy memorandum dated January 20, 1987 from G.T. Helms, Chief of EPA's control Programs Operations Branch, entitled, ''Determination of Economic Feasibility''. Upon completing this review the EPA is proposing to disapprove Michigan's SIP revision request because it is inconsistent with the Act and the applicable policy set forth in this document.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## IV. Administrative Requirements

### *A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's disapproval of the State's request under Section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval.

Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

### *C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: January 23, 1998.

**Michelle D. Jordan,**

*Acting Regional Administrator.*

[FR Doc. 98–2614 Filed 2–2–98; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

**[FRL–5958–4]**

**RIN 2060–AG12**

## Protection of Stratospheric Ozone; Listing of Substitutes for Ozone-Depleting Substances

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes restrictions or prohibitions on substitutes for ozone depleting substances (ODSs) under the Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990, which requires EPA to evaluate substitutes for the ODSs to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone depleting compounds while avoiding a shift into substitutes posing other environmental problems.

On March 18, 1994, EPA promulgated a final rulemaking setting forth its plan for administering the SNAP program, and issued decisions on the acceptability and unacceptability of a number of substitutes. In this Notice of Proposed Rulemaking (NPRM), EPA is issuing its preliminary decisions on the acceptability of certain substitutes not previously reviewed by the Agency. Specifically, this action proposes to list as unacceptable the use of two gases as refrigerants in ''self-chilling cans'' because of unacceptably high greenhouse gas emissions which would result from the direct release of the cans' refrigerants to the atmosphere.

**DATES:** Written comments or data provided in response to this document must be submitted by March 5, 1998.

**ADDRESSES:** Written comments and data should be sent to Docket A–91–42, U.S. Environmental Protection Agency, OAR Docket and Information Center, 401 M Street, S.W., Room M–1500, Mail Code 6102, Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Carol Weisner, Stratospheric Protection Division, U.S. Environmental Protection Agency, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460, or at the address listed in the next paragraph for overnight or courier deliveries. Information designated as Confidential Business Information (CBI) under 40 CFR, part 2, subpart B must be sent directly to the contact person for this document. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

**FOR FURTHER INFORMATION CONTACT:** Carol Weisner at (202) 564–9193 or fax (202) 565–2096, Substitutes Analysis and Review Branch, Stratospheric Protection Division, Mail Code 6205J, Washington, D.C. 20460. Overnight or courier deliveries should be sent to our 501–3rd Street, NW, Washington, DC, 20001 location.

**SUPPLEMENTARY INFORMATION:**

### I. Overview of This Action

This action is divided into six sections, including this overview:

II. Section 612 Program
A. Statutory Requirements
B. Regulatory History
III. Proposed Listing of Substitutes
IV. Administrative Requirements
V. Additional Information

### II. Section 612 Program

#### *A. Statutory Requirements*

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

*Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

*Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

*Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

*90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.

*Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

*Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

#### *B. Regulatory History*

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consume large volumes of ozone-depleting compounds.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

## III. Proposed Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risks screens can be found in the public docket, as described above in the **ADDRESSES** portion of this document.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified five possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Fully acceptable substitutes, *i.e.*, those with no restrictions, can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. Use of such substitutes in ways that are inconsistent with such use conditions renders these substitutes unacceptable.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in application and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

In this Notice of Proposed Rulemaking (NPRM), EPA is issuing its preliminary decision on the acceptability of certain substitutes not previously reviewed by the Agency. As described in the final rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published as separate Notices of Acceptability in the **Federal Register**.

Part A. below presents a detailed discussion of the proposed substitute listing determinations by major use sector. Tables summarizing listing decisions in this Notice of Proposed Rulemaking are in Appendix F. The comments contained in Appendix F to Subpart G of 40 CFR Part 82, provide additional information on a substitute. Since comments are not part of the regulatory decision, they are not mandatory for use of a substitute. Nor should the comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments in their application of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

### *A. Refrigeration and Air Conditioning*

1. Unacceptable Substitutes

a. CFC–12, R–502, and HCFC–22 Household Refrigeration, Transport Refrigeration, Vending Machines, Cold Storage Warehouses, and Retail Food Refrigeration, Retrofit and New.

(i) Self-chilling Cans Using HFC–134a or HFC–152a.

This technology represents a product substitute intended to replace several types of refrigeration equipment. A self-chilling can includes a heat transfer unit that performs the same function as one half of the traditional vapor-compression refrigeration cycle. The unit contains a charge of pressurized refrigerant that is released to the atmosphere when the user activates the cooling unit. As the refrigerant's pressure drops to atmospheric pressure, it absorbs heat from the can's contents and evaporates, cooling the can. Because this process provides the same cooling effect as household refrigeration, transport refrigeration, vending machines, cold storage warehouses, or retail food refrigeration, it is a substitute for CFC–12, R–502, or HCFC–22 in these systems. The Agency requests comment on the approach of defining self-chilling cans as a product substitute for a variety of types of refrigeration equipment.

HFCs have played a major role in the phaseout of CFC refrigerants, and EPA expects this responsible use to continue. HFC–134a is an acceptable substitute for ozone-depleting refrigerants in a wide variety of refrigeration systems. In addition, both HFC–134a and HFC–152a are components in refrigerant blends that are themselves acceptable substitutes. These refrigeration systems are closed, meaning that refrigerant recirculates, and there are EPA regulations requiring their recovery and reuse. The only source of refrigerant emissions is leaks, and EPA regulations require the repair of large leaks from these systems. In contrast, however, self-chilling cans work by releasing refrigerant.

In assessing the risks of proposed substitutes under the SNAP program, EPA considers all environmental impacts a substitute may produce. HFC–134a and HFC–152a have no ozone depletion potential, are low in toxicity, and are not volatile organic compounds. HFC–152a is flammable, but the primary area of concern for both HFC–134a and HFC–152a is their potential to contribute to global warming; both compounds are powerful greenhouse gases.

EPA has assessed the possible contribution of self-chilling can technology to U.S. emissions of global warming gases when HFC–134a and HFC–152a are used. EPA included several possible market penetration values in this assessment, ranging from 1% to 25%. A one percent penetration would amount to sales of roughly one billion cans annually. The resultant emissions estimates are directly proportional to the market penetration; to estimate the effects of market penetrations other than those evaluated here, scale appropriately. For purposes of illustration, the discussion below uses market penetration scenarios of 5%

and 25%. Because the product has not yet been introduced, it is not possible to know actual market penetration, and the Agency is not aware of any projections of market penetration in the trade press. EPA invites comment on both the expected cost of producing and sales price of self-chilling cans and on their possible market penetration.

Because the total US market for beer and soft drinks is approximately 100 billion cans per year, even a small market penetration could substantially increase US emissions of greenhouse gases. Based on industry estimates appearing in trade journals for the beverage canning industry and a basic understanding of the physical properties of refrigerants, EPA assumed that a 12 ounce beverage can requires 2 ounces of refrigerant and a 16 ounce beverage can requires 2.7 ounces of refrigerant. EPA used values from the Intergovernmental Panel on Climate Change for the global warming potential (GWP) of HFC–134a (1300) and HFC–152a (140), based on a 100-year integrated time horizon. This analysis is conservative for two reasons: (1) EPA assumed that the refrigerant absorbs heat only from the beverage and not from the surrounding air, thereby reducing the refrigerant charge required, and (2) several articles in canning industry trade journals have indicated that the likely usage would be 3–4 oz. of refrigerant per 12 ounce can instead of the 2 ounces assumed here. Under this scenario, 5% market penetration of cans using HFC–134a results in emissions of 96 million metric tons of carbon equivalent (MMTCE).

To provide perspective, this value is 25% higher than 76.5 MMTCE, the reductions in greenhouse gas emissions currently estimated in the year 2000 under President Clinton's Climate Change Action Plan published in October, 1993 (CCAP). At 25% market penetration of cans using HFC–134a, the emissions are 479 MMTCE, nearly one third of the total emissions from all US power generation. Using HFC–152a, a 5% market penetration results in emissions of 10 MMTCE and a 25% market penetration yields emissions of 52 MMTCE, or more than 2/3 the total expected reductions under the CCAP.

Under the SNAP program, EPA compares the risks of a given substitute to what it is replacing, as well as to the risks of other substitutes available for the same use. Therefore, EPA also analyzed the effect of replacing systems with new equipment using new refrigerants in the end-uses listed above with self-chilling cans. Like chilling cans, refrigeration systems have a direct effect on greenhouse gas emissions related to emissions, but leakage from refrigeration systems is minimal. They also have an indirect effect because the production of electricity to power the systems results in the release of carbon dioxide. Self-chilling cans have only a direct effect, namely the release of refrigerant to the atmosphere. However, cans using HFC–134a exceed the combined direct and indirect effects of equivalent refrigeration systems by a factor of more than 40. Cans using HFC–152a exceed refrigeration systems by a factor of 4. Again, these are conservative estimates, because EPA assumes that these systems are dedicated solely to cooling beverages, while in reality much of this capacity is devoted to cooling other products.

Today's proposal has no implications for high value medical emissive uses, such as the use of HFC–134a as a propellant in metered dose inhalers. Information from trade journals and the company developing self-chilling cans indicates that the predominant use of this technology will be to cool beverages. EPA has always distinguished between critical uses of substitutes and more general use, and therefore invites comment on other potential uses of self-chilling cans. In addition, EPA has long recognized the difference between uses designed to be emissive and those designed to be closed systems. For example, this determination has no bearing on continued, responsible use of HFC–134a and HFC–152a in non-emissive uses such as retail food refrigeration.

Under the SNAP program, EPA has encouraged the introduction of innovative technology designed to reduce emissions of ozone depleting substances. In pursuit of such developments, we have promoted the use of substitutes for ozone-depleting substances (ODS) with lower overall risk. Guided by this policy, we have stressed the importance of examining all the environmental effects a substitute may produce, including global warming. EPA has restricted the use of several greenhouse gases through narrowed use limits and unacceptability determinations. For example, PFCs may only be used in new heat transfer systems after a study has demonstrated that no other substitute will work. Similarly, EPA proposed several refrigerant blends as unacceptable on May 21, 1997 (62 FR 27873) because they contain HFC–23, a gas with an extremely high GWP. Today's proposal is consistent with EPA's ongoing efforts to assure that as the transition away from ODS continues, we do not contribute to significant new use of high-GWP greenhouse gases.

Therefore, EPA proposes self-chilling cans using HFC–134a or HFC–152a to be unacceptable substitutes for CFC–12, R–502, or HCFC–22 in the end-uses listed above.

## IV. Administrative Requirements

### *A. Executive Order 12866*

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

### *B. Unfunded Mandates Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not

selected or this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. However, this proposed rule has the net effect of reducing burden from part 82, Stratospheric Protection regulations, on regulated entities.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because costs of the SNAP requirements as a whole are expected to be minor. In fact, this proposed rule offers regulatory relief to small businesses by providing acceptable alternatives to phased-out ozone-depleting substances. Additionally, the SNAP rule exempts small sectors and end-uses from reporting requirements and formal agency review. To the extent that information gathering is more expensive and time-consuming for small companies, the actions proposed herein may well provide benefits for small businesses anxious to examine potential substitutes to any ozone-depleting class I and class II substances they may be using, by requiring manufacturers to make information on such substitutes available. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*D. Paperwork Reduction Act*

EPA has determined that this proposed rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). The OMB Control Numbers are 2060–0226 and 2060–0350.

## V. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Federal Register notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. Notices and rulemakings under the SNAP program are available from the Ozone Depletion World Wide Web site at ''http://www.epa.gov/ozone/title6/snap'' .

### List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 28, 1998.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671—7671q.

## Subpart G—Significant New Alternatives Policy Program

2. Subpart G is amended by adding Appendix F to read as follows:

### Appendix F to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes

REFRIGERANTS—UNACCEPTABLE SUBSTITUTES

| End-use | Substitute | Decision | Comments |
|---|---|---|---|
| CFC–12, R–502, and HCFC-22 Household Refrigeration, Transport Refrigeration, Vending Machines, Cold Storage Warehouses, and Retail Food Refrigeration, Retrofit and New. | Self-Chilling Cans Using HFC–134a or HFC–152a. | Unacceptable | Unacceptably high greenhouse gas emissions from direct release of refrigerant to the atmosphere. |

[FR Doc. 98–2617 Filed 2–2–98; 8:45 am]

BILLING CODE 6560–50–P

# Notices

**Federal Register**

Vol. 63, No. 22

Tuesday, February 3, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service

### Notice of Intent To Extend a Currently Approved Information Collection

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. chapter 35, and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request an extension for three years for a currently approved information collection in support of programs administered by CSREES's Higher Education Programs (HEP) unit.

**DATES:** Comments on this notice must be received by April 9, 1998 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240, (202) 401–1761. E-mail: OEP@reeusda.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* CSREES/Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program Application Guidelines.

*OMB Number:* 0524–0024.

*Expiration Date of Current Approval:* August 31, 1998.

*Type of Request:* Intent to extend a currently approved information collection for three years.

*Abstract:* The HEP unit of USDA/CSREES administers a competitive, peer-reviewed research and teaching program, under which grants of a high-priority nature are awarded. This program is authorized pursuant to the authorities contained in section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(6)), for the Food and Agricultural Sciences National Needs Graduate Fellowships Program.

This program is conducted to help meet the Nation's needs for food and agricultural scientific and professional expertise. These fellowships are intended to encourage outstanding students to pursue and complete a graduate degree in an area of the food and agricultural sciences for which development of scientific expertise is designated by HEP–CSREES as a national need.

Before awards can be made, certain information is required from applicants as part of an overall proposal package. In addition to project summaries, descriptions of the research or teaching efforts, literature reviews, curricula vitae of principal investigators, and other, relevant technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. Because of the nature of the competitive, peer-reviewed process, it is important that information from applicants be available in a standardized format to ensure equitable treatment.

Each year, HEP solicitations are issued requesting proposals for various teaching areas targeted for support. Applicants submit proposals for these targeted teaching areas following the format outlined in the proposal application guidelines accompanying each solicitation. These proposals are evaluated by peer review panels and awarded on a competitive basis.

This program uses forms that were approved in an OMB-approved collection of information package (OMB No. 0524–0024).

The National Needs Graduate Fellowships Grants Program Summary (not numbered), Forms CSREES–701, ''Proposal Cover Page;'' CSREES–702, ''National Need Summary;'' CSREES–703, ''Proposal Budget;'' CSREES–706, ''Intent to Submit;'' CSREES–707, ''Fellowship Appointment Documentation;'' CSREES–708, ''Summary Vita—Teaching Proposal;'' CSREES–709, ''Graduate Fellow Exit Report'' are mainly used for proposal evaluation and administration purposes. While some of the information will be used to respond to inquiries from Congress and other government agencies, the forms are not designed to be statistical surveys or data collection instruments. Their completion by potential recipients is a normal part of the application to Federal agencies which support basic and applied science.

The following information is collected from each applicant:

Form CSREES–701—*Proposal Identification:* Provides names, addresses, and phone numbers of project directors and authorized agents of applicant institutions and general information regarding the proposals.

Form CSREES–702—*National Need Summary:* Provides a summary for the national need area addressed in the proposal.

Form CSREES–703—*Budget:* Provides a breakdown of the purposes for which funds will be spent in the event of a grant award.

Form CSREES–706—*Intent to Submit:* Provides names, addresses, and phone numbers of project directors and authorized agents of applicant institutions and general information regarding potential proposals.

Form CSREES–707—*Fellowship Appointment Documentation:* Completed by project directors awarded grants under the program. Provides documentation of fellowship appointments, pertinent demographic data on fellows supported under the program.

Form CSREES–708—*Teaching Credentials:* Identifies key personnel contributing substantially to the conduct of a teaching project and provides pertinent information concerning their backgrounds.

Form CSREES–709—*Graduate Fellow Exit Report:* Provides documentation of fellows' completion of the program.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 23 hours per response for applicants and two hours per response for grantees.

*Respondents:* Non-profit institutions, individuals, and State, local, or Tribal governments.

*Estimated Number of Responses per Form:* For applicants: 200 each for the

National Needs Narrative (not numbered), Forms CSREES–701, CSREES–702, CSREES–703, CSREES–706, and 400 for CSREES–708. For grantees: 100 each for Forms CSREES–707 and CSREES–709.

*Estimated Total Annual Burden on Respondents:* For applicants: 9,233 hours, broken down by: 50 hours for Form CSREES–701 (one-quarter hour per 200 respondents); 300 hours for Form CSREES–702 (one and one-half hours per 200 respondents); 50 hours for Form CSREES–703 (one-quarter hour per 200 respondents); 33 hours for Form CSREES–706 (10 minutes per 200 respondents); 2,800 hours for Form CSREES–708 (seven hours per 400 respondents); and 6,000 hours for the National Need Narrative (30 hours per 200 respondents). For grantees, this estimate is 225 hours, broken down by: 25 hours for Form CSREES–707 (one-quarter hour per 100 respondents); and 200 hours for Form CSREES–709 (two hours per 100 respondents).

*Frequency of Responses:* Annually.

Copies of this information collection can be obtained from Suzanne Plimpton, Policy and Program Liaison Staff, CSREES, (202) 401–1302. E-mail: OEP@reeusda.gov.

*Comments:* Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240, (202) 401–1761. E-mail: OEP@reeusda.gov. Comments also may be submitted directly to OMB and should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, D.C., this 22nd day of January, 1998.

**B.H. Robinson,**

*Administrator, Cooperative State Research, Education, and Extension Service.*

[FR Doc. 98–2508 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–22–P

## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

### Agency Information Collection Activities: Proposed Collection; Comment Request-Determining Eligibility for Free School Meals and Milk of Children From Households Certified for Temporary Assistance for Needy Families

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Food and Consumer Service (FCS) announces its intention to request Office of Management and Budget (OMB) review and approval of a revision in the information collections related to making eligibility determinations for free and reduced price meals and free milk in schools. The revision is the result of a statutory change extending automatic eligibility for free meals and free milk to children from families under Temporary Assistance for Needy Families (TANF) programs.

**DATES:** To be assured of consideration, comments must be received by April 6, 1998.

**ADDRESSES:** Send comments and requests for copies of this information collection to: Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1008, Alexandria, Virginia 22302.

Comments are invited on the following areas: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry Hallberg at (703) 305–2600.

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

*OMB Number: 0584–0026.*

*Expiration Date:* 12/31/99.

*Type of Request:* Revision of existing collection.

*Abstract:* Section 109(g)(1)(B)(i)(I) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 amended Section 9(b)(6)(A)(ii) of the National School Lunch Act to extend automatic eligibility for free meals and free milk to children from families under the Temporary Assistance for Needy Families (TANF) Program, under part A of title IV of the Social Security Act, provided the TANF standards are comparable to or more restrictive than the State's Aid to Families with Dependent Children (AFDC) program standards in effect on June 1, 1995. Information is needed to meet the statutory requirement that the Secretary ensure that TANF is comparable to or more restrictive than the AFDC program in effect on June 1, 1995, in order for the State to implement automatic eligibility or direct certification procedures for children from TANF households. Because States have latitude in the way they administer TANF, the Secretary is asking States agencies, in cooperation with the agency in each State administering TANF, to make the comparison and inform the Secretary of their determination. Thereafter, State agencies would only have to notify the Secretary when the TANF program in their State is no longer comparable to or is no longer more restrictive than the State's AFDC Program in effect on June 1, 1995.

*Estimate of Burden:* A new reporting burden for this collection of information is estimated at 12 hours per respondent.

*Respondents:* State agencies.

*Estimated Number of Respondents:* 52 respondents (50 States, D.C. and Guam). Although several States have two State agencies that administer the School Nutrition Programs, only 1 response per State is requested.

*Estimated Total Annual Burden on Respondents:* 624 burden hours.

Dated: January 21, 1998.

**Yvette S. Jackson,**

*Administrator, Food and Consumer Service.*

[FR Doc. 98–2605 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Western Washington Cascades Province Interagency Executive Committee (PIEC) Advisory Committee

**AGENCY:** Forest Service, USDA

**ACTION:** Notice of meeting.

**SUMMARY:** The Western Washington Cascades PIEC Advisory Committee will meet on February 19, 1998 at the Washington Department of Fish and Wildlife Regional Office, 16018 Mill Creek Boulevard, in Mill Creek, Washington. The meeting will begin at 9:00 a.m. and continue until about 4:00 p.m. Agenda items to be covered include: (1) Current and potential coordination among land management and environmental regulatory agencies to further ecosystem-based management in the Western Washington Cascades Province; (2) discussion on how to best coordinate with the Yakima Province Advisory Committee regarding the implementation of the Snoqualmie Pass Adaptive Management Area Plan; (3) future meeting dates and topics through mid-September, 1998, when the current Advisory Committee charter period ends; (4) other topics as appropriate; and, (5) open public forum. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Chris Hansen-Murray, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 425–744–3276.

Dated: January 28, 1998.

**Dennis E. Bschor,**

*Forest Supervisor.*

[FR Doc. 98–2569 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Seek Approval to Conduct an Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the Agricultural Trade Association Survey.

**DATES:** Comments on this notice must be received by April 9, 1998 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

**SUPPLEMENTARY INFORMATION:**

*Title:* Agricultural Trade Association Survey.

*Type of Request:* Intent to seek approval to conduct an information collection.

*Abstract:* The survey is aimed at U.S. agricultural producer and commodity trade associations whose members produce, process, and/or market agricultural goods or services sold commercially in the U.S. and/or export markets. The survey asks for information about steps trade associations have taken or will take to help their members become more competitive in the emerging global economy. Data collected will help United States Agency for International Development to formulate programs to foster hemispheric agricultural trade that is mutually beneficial to agricultural producers in both the United States and in Latin America and the Caribbean.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 30 minutes per response.

*Respondents:* U.S. Trade Associations.

*Estimated Number of Respondents:* 1,300.

*Estimated Total Annual Burden on Respondents:* 650 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C., January 21, 1998.

**Rich Allen,**

*Acting Administrator, National Agricultural Statistics Service.*

[FR Doc. 98–2606 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–20–P

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Request an Extension of a Currently Approved Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension of a currently approved information collection, the

Cold Storage Survey that expires July 31, 1998.

**DATES:** Comments on this notice must be received by April 9, 1998 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

**SUPPLEMENTARY INFORMATION:**

*Title:* Cold Storage Survey.

*OMB Number:* 0535–0001.

*Expiration Date of Approval:* July 31, 1998.

*Type of Request:* To extend a currently approved information collection.

*Abstract:* The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The monthly Cold Storage Survey provides information on national supplies of food in refrigerated storage facilities. A biennial survey of refrigerated warehouses is also conducted to provide a benchmark of the capacity available for refrigerated storage of the nation's food supply.

The Cold Storage Survey has approval from OMB for a 3-year period. NASS intends to request that the survey be approved for another 3 years.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 24 minutes per response.

*Respondents:* Refrigerated Storage Facilities.

*Estimated Number of Respondents:* 11,250.

*Estimated Total Annual Burden on Respondents:* 4,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C., January 22, 1998.

**Rich Allen,**

*Acting Administrator, National Agricultural Statistics Service.*

[FR Doc. 98–2607 Filed 2–2–98; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Request an Extension of a Currently Approved Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension of a currently approved information collection, the Field Crops Production that expires July 31, 1998.

**DATES:** Comments on this notice must be received by April 9, 1998 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

**SUPPLEMENTARY INFORMATION:**

*Title:* Field Crops Production.

*OMB Number:* 0535–0002.

*Expiration Date of Approval:* July 31, 1998.

*Type of Request:* To extend a currently approved information collection.

*Abstract:* The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Field Crops Production program consists of non-probability field crops surveys. Unique crop characteristics such as concentration of crops in localized geographical areas require the use of supplemental panel surveys. These surveys are extremely valuable for commodities where acres and yield are published at the county level.

The Field Crops Production has approval from OMB for a 3-year period. NASS intends to request that the survey be approved for another 3 years.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 14 minutes per response.

*Respondents:* Farms.

*Estimated Number of Respondents:* 536,000.

*Estimated Total Annual Burden on Respondents:* 125,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C., January 22, 1998.

**Rich Allen,**

*Acting Administrator, National Agricultural Statistics Service.*

[FR Doc. 98–2608 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–20–P

## DEPARTMENT OF AGRICULTURE

### Rural Business—Cooperative Service

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Business—Cooperative Service, USDA.

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for the Business and Industry Loan Program.

**DATES:** Comments on this notice must be received on or before April 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Rick Bonnet, Senior Commercial Loan Specialist, RBS, U.S. Department of Agriculture, Stop 3221, 1400 Independence Avenue SW, Washington, DC 20250–3221, telephone (202) 720–1804 or E-mail ''rbonnet@rurdev.usda.gov''. The Federal Information Relay service on 1–800–887–8339 is available for TDD users.

**SUPPLEMENTARY INFORMATION:**

*Title:* Business and Industry Loan Program.

*OMB Number:* 0570–0014.

*Expiration Date of Approval:* September 1998.

*Type of Request:* Extension of a currently approved information collection and recordkeeping requirements.

*Abstract:* The B&I Program is authorized under Section 310–B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the Business and Industry (B&I) Guaranteed and Direct Loan Programs is to improve, develop, or finance businesses, industry and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure either through the guaranteeing of quality loans made by lending institutions or making direct loans, thereby providing lasting community benefits. B&I program authority is composed of direct loan authority and loan guarantee authority. The program is administered by the Agency through a State Director serving the State.

All reporting and recordkeeping burden estimates for making and servicing B&I Guaranteed Loans have been moved to the new B&I Guaranteed Loan Program regulations which are at 7 CFR 4279–A and B and 4287–B. The only burden remaining associated with 7 CFR 1980–E is a small portion of B&I Direct loanmaking. 7 CFR 1951–E is used for servicing B&I Direct and Community Facility loans. The Agency is currently developing new B&I Direct Loan Program regulations. When completed, 7 CFR 1980–E will be eliminated from the CFR. Because only the burden associated with 7 CFR 1980–E is included in this package, only a fraction of the total reporting and recordkeeping burden for making and servicing B&I Direct Loans is reflected.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 2.75 hours per response.

*Respondents:* Rural businesses, for-profit businesses, non-profit businesses, Indian tribes, and public bodies.

*Estimated number of respondents:* 200.

*Estimated number of responses per respondent:* 2.

*Estimated Total Annual Burden on Respondents:* 3,370 hours.

Copies of this information collection and recordkeeping can be obtained from Jean Mosley, Regulations and Paperwork Management Branch, (202) 720–9750.

*Comments:* Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to Jean Mosley, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Stop 0743, 1400 Independence Avenue SW, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Dayton J. Watkins,**

*Administrator, Rural Business—Cooperative Service.*

[FR Doc. 98–2555 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–XY–U

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) invites comments on these information collections for which RUS intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by April 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** F. Lamont Heppe, Jr., Director, Program Support Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program

Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

- *Title:* Report of Progress of Construction and Engineering Services and Engineer's Monthly Report of Substation Progress.

*OMB Control Number:* 0572–0014.

*Type of Request:* Reinstatement of a previously approved information collection, without change.

*Abstract:* The Rural Utilities Service (RUS) manages programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by OMB Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables.

The Act authorizes RUS to lend funds for construction of various facilities under terms and conditions which will safeguard the security of the loans. One method of safeguarding loan security is to see that the facilities for which funds are loaned are actually constructed.

RUS therefore requires borrowers to submit RUS Form 178, Report of Progress of Construction and Engineering Services, and RUS Form 457, Engineer's Monthly Report of Substation Progress. These forms keep RUS abreast of progress on these construction projects on a month-by-month basis. The frequency of the report allows RUS to detect any potential problems before they reach a critical stage and to make the necessary adjustments to place construction back on schedule.

*Respondents:* Small business or organization.

*Annual Reporting Burden:*

RUS Form 178

*Estimated Number of Respondents:* 60.

*Estimated Number of Responses per Respondent:* 10.

*Estimated Total Annual Burden on Respondents:* 300 hours.

RUS Form 457

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 10.

*Estimated Total Annual Burden on Respondents:* 500 hours.

*Combined Estimated Total Annual Burden on Respondents:* 800 hours.

- *Title:* Request for Mail List Data.

*OMB Control Number:* 0572–0051.

*Type of Request:* Reinstatement of a previously approved information collection, with change.

*Abstract:* This RUS Form 87 is used for both the RUS electric and telecommunication programs to obtain the names and addresses of the borrowers' officials with whom RUS must communicate directly in order to administer the agency's lending programs. Changes occurring at the borrowers' annual meetings (e.g., the selection of board members, managers, attorneys, certified public accountants, or other officials) make necessary the collection of this information.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .25 hour per response.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 905.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 226 hours.

- *Title:* State Telecommunications Modernization Plan.

*OMB Control Number:* 0572–0104.

*Type of Request:* Reinstatement of a previously approved information collection, with change.

*Abstract:* State Telecommunication Modernization Plan (STMP) is a plan for improving the public switched telecommunications network. The STMP will be reviewed by the RUS telecommunication program staff to ensure that it complies with the requirements setforth in §§ 1751.100–1751.106.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 350 hours per response.

*Respondents:* Small business or other for-profit.

*Estimated Number of Respondents:* 1.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 350 hours.

- *Title:* Demand Side Management Plan and Integrated Resource Plan.

*OMB Control Number:* 0572–0105.

*Type of Request:* Reinstatement of a previously approved information collection, with change.

*Abstract:* To be eligible for a loan for DSM, energy conservation programs or renewable energy systems, a borrower is required to submit an RUS-approved integrated resource plan (IRP) with the loan application. An IRP is a plan resulting from a planning and selection process that evaluates the benefits and costs of the full range of alternatives, including new generating capacity, power purchases, DSM, system operating efficiency improvements, and renewable energy sources to meet future energy needs flexibility and at the lowest system cost. Loan applications for DSM programs must also be supported by a DSM plan, which must be consistent with the borrower's own IRP or with its power supplier's IRP if it is a member of a power supply borrower's system.

*Estimate of Burden:* Public reporting for this collection of information is estimated to average 8 hours per respondent.

*Respondents:* Small business or other for-profit.

*Estimated Number of Respondents:* 3.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 24 hours.

Requests for copies of an information collection can be obtained from Gail Salgado-Duff, Program Support and Regulatory Analysis, at (202) 205–3660. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 28, 1998.

**Wally Beyer,**

*Administrator, Rural Utilities Service.*

[FR Doc. 98–2554 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

A meeting of the Materials Processing Equipment Technical Advisory Committee will be held February 18, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing and related technology.

**Agenda**

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of the Wassenaar implementation regulation.
4. Discussion of future Wassenaar Arrangement list review meetings on Control List Category 2 (machine tools).

5. Election of Chairman.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter at 202–482–2583.

Dated: January 28, 1998.

**Lee Ann Carpenter,**

*Director, Technical Advisory Committee Unit.*

[FR Doc. 98–2500 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–DT–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–405–802]**

### Certain Cut-to-Length Carbon Steel Plate From Finland; Notice of Rescission of Antidumping Duty Administrative Review

**EFFECTIVE DATE:** February 3, 1998.

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of Antidumping Duty Administrative Review.

**EFFECTIVE DATE:** February 3, 1998.

**SUMMARY:** On September 25, 1997, the Department of Commerce (''the Department'') published in the **Federal Register** (62 FR 50292) a notice announcing the initiation of an administrative review of the antidumping duty order on Certain Cut-to-Length Carbon Steel Plate (Carbon Steel Plate) from Finland. This review covered the period August 1, 1996 through July 31, 1997. This review has now been rescinded as a result of the withdrawal of the request for review of subject merchandise during the period of review.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Tolson or Linda Ludwig, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–2312 or 482–3833, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 2, 1997, Dewey Ballantine, on behalf of petitioners in this proceeding, requested a review of sales made by Rautaruukki Oy (Rautaruukki). On September 17, 1997, Rautaruukki filed a letter certifying to the Department that there had been no sales or shipments of subject merchandise during the period of review (POR). On September 26, 1997, Rautaruukki advised the Department that it had contacted the U.S. Bureau of the Census in order to confirm that there were no entries of the subject merchandise into the United States during the POR despite the Bureau's report to the contrary. The Department sent a no-shipment inquiry regarding Rautaruukki to U.S. Customs on October 16, 1997. Customs did not indicate that there were any such entries.

On January 20, 1998, Rautaruukki filed a letter with the Department confirming that the entries of cut-to-length carbon steel plate reported in the Census Bureau statistics as imports from Finland during the POR were in error. On January 21, 1998, petitioners withdrew their request for this administrative review.

Ordinarily, parties have 90 days from the publication of the notice of initiation of review in which to withdraw a request for review. See 19 CFR 351.213(d)(62 FR 27295, 27393, May 19, 1997). We did not receive petitioners withdrawal request until January 21, 1998, after the 90-day period had elapsed. Given that the review has not progressed substantially and there would be no undue burden on the parties or the Department, the Department has determined that it would be reasonable to grant the withdrawal at this time. See Id. Therefore, in accordance with section 353.213(d) of the Department's regulations, the Department is rescinding this administrative review.

This administrative review is being rescinded in accordance with Section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 351.213(d)(3).

Dated: January 28, 1998.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, Enforcement Group III.*

[FR Doc. 98–2627 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–809]**

### Certain Forged Stainless Steel Flanges From India; Preliminary Results of New Shipper Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**ACTION:** Notice of preliminary results of new shipper antidumping duty administrative review.

**SUMMARY:** In response to a request by one manufacturer/exporter, Panchmahal Steel Ltd. (Panchmahal), the Department of Commerce (the Department) is conducting a new shipper administrative review of the antidumping duty order on certain forged stainless steel flanges (flanges) from India. The review covers sales during the period February 1, 1996 through January 31, 1997.

We preliminarily determine that Panchmahal sold subject merchandise at not less than normal value during the period of review (POR).

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

**EFFECTIVE DATE:** February 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Thomas Killiam, Alain Letort, or John Kugelman, Office of AD/CVD Enforcement, Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–2704 (Killiam), –4243 (Letort), or –0649 (Kugelman).

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR part 351 (62 FR 27296—May 19, 1997), do not govern these

proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

**Background**

The Department published the antidumping duty order on certain stainless steel flanges from India on February 9, 1994 (59 FR 5994). Panchmahal, by letters dated February 24, March 18, and April 1, 1997, requested a new shipper review pursuant to section 751(a)(2)(B) of the Act and section 353.22(h) of the Department's interim regulations, which govern determinations of antidumping duties for new shippers. These provisions state that, among other requirements, a producer or exporter requesting a new shipper review must include with its request the date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States (interim regulations, section 353.22(h)(2)(i)). Panchmahal provided the shipment date at the time of its request for review.

On May 2, 1997, the Department published a notice of initiation of this new shipper review of Panchmahal (62 FR 24088). The Department is now conducting this review in accordance with section 751 of the Act and section 353.22 of its interim regulations.

**Scope of the Review**

The products covered by this order are certain forged stainless steel flanges both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

The review covers one Indian manufacturer/exporter, Panchmahal, and the period February 1, 1996 through January 31, 1997.

**Product Comparisons**

In accordance with section 771(16) of the Act, we considered all stainless steel flanges which respondent sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent.

**Fair Value Comparisons**

To determine whether sales of subject merchandise by the respondent to the United States were made at less than normal value, we compared export price (EP) to normal value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

**Export Price**

We calculated the price of United States sales based on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to the date of importation and the constructed export price methodology was not indicated by the facts of record.

We calculated EP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for movement expenses, which were comprised of international freight and marine insurance; we also added duty drawback to the starting price.

**Normal Value**

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market in the usual commercial quantities and in the ordinary course of trade.

We made adjustments to NV for differences in credit expenses. We reduced NV by home market packing costs section under 773(a)(6)(B) and increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act.

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In its questionnaire responses, Panchmahal stated that there were no differences in its selling activities by customer categories within each market. In order to confirm independently the absence of separate levels of trade within or between the U.S. and home markets, we examined Panchmahal's

questionnaire responses for indications that Panchmahal's functions as a seller differed qualitatively or quantitatively among customer categories. Where possible, we further examined whether each selling function was performed on a substantial portion of sales.

Panchmahal sold to end-users in the U.S. market. In the home market, Panchmahal sold to local distributors and end-users. Panchmahal performed essentially the same selling functions for sales to all its home-market customers, as well as to U.S. customers. Thus, our analysis of the questionnaire response leads us to conclude that sales within or between each market are not made at different levels of trade. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, we have not made a level of trade adjustment because all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) is not appropriate.

**Currency Conversion**

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. See, *e.g.*, Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review (61 FR 8915, 8918—March 6, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

CERTAIN STAINLESS STEEL FLANGES FROM INDIA

| Producer/manufacturer/exporter | Weighted-average margin (percent) |
|---|---|
| Panchmahal | 0.00 |

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of the administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 90 days after the date of publication of this notice.

**Cash Deposit**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the respondent will be the rate established in the final results of this administrative review (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins lower than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any prior reviews, the cash deposit rate will be the ''all others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 26, 1998.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 98–2626 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 97–105. *Applicant:* Georgia Institute of Technology, Institute for Bioengineering and Bioscience, 281 Ferst Drive, SST/P. Weber Building, IBB, Atlanta, GA 30332–0363. *Instrument:* CardioMed Flowmeter, Model CM4008. *Manufacturer:* MediStim as, Norway. *Intended Use:* The instrument will be used to investigate the mechanism of cardiac flow in an *in vitro* model of the left ventricle. Experiments consist of studying the parameters that influence the flow patterns in order to better understand the mechanism of cardiac flow, so that the diagnosis of cardiovascular disease can be improved. The research projects are a part of the scientific training of graduate and undergraduate students seeking advanced degrees (Master's and Ph.D. levels) in the Cardiovascular Fluid Mechanics Laboratory. Application accepted by Commissioner of Customs: December 24, 1997.

*Docket Number:* 97–106. *Applicant:* University of Wisconsin-Madison, 750

University Avenue, Madison, WI 53706–1490. *Instrument:* Length Controller and Force Transducer System, Models 308B and 403A. *Manufacturer:* Aurora Scientific, Canada. *Intended Use:* These instruments will be used as part of an experimental apparatus to study muscle cell function. The high speed length controller is used to introduce very small, rapid length perturbations to the cell and the force transducer is used to measure the contractile force output of the cell. These experiments will provide information on the contractile process in muscle cells and provide information on the effect of various disease states on muscle cell function. Application accepted by *Commissioner of Customs:* December 29, 1997.

*Docket Number:* 97–107. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, 207 Henry Administration Building, Urbana, IL 61801. *Instrument:* Near-Field Scanning Optical Microscope. *Manufacturer:* Witec GmbH, Germany. *Intended Use:* The instrument will be used for investigations of the absorption coefficient of polymers, Raman shift of biomaterials, porosity as a function of electric field of membranes, the corrosion in liquid environments in aluminum and photo-doping superconductors. In addition, the instrument will be used for educational purposes in the course Physics 499 Thesis Research and equivalent courses in Chemistry, Materials Science. *Application accepted by Commissioner of Customs:* December 29, 1997.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 98–2629 Filed 2–2–98; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 97–099. *Applicant:* Indiana/Purdue University, 620 Union Drive, Room 542, Indianapolis, IN 46202. *Instrument:* Xenon Flashlamp, Model JML–C2. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument is intended to be used in a research project involving the investigation of contraction in muscle. Caged-calcium molecules are introduced into the muscle fiber and in response to a flash of UV light, the molecules will be photolyzed and free calcium ions will be released in a controlled manner. *Application accepted by Commissioner of Customs:* December 11, 1997.

*Docket Number:* 97–100. *Applicant:* University of California, San Diego, Department of Medicine 0–931, 9500 Gilman Drive, La Jolla, CA 92093–0931. *Instrument:* Digital Sleep Recorder, Model VitaPort 2. *Manufacturer:* TEMEC Instruments BV, The Netherlands. *Intended Use:* The instrument is intended to be used for the study of the effects of microgravity on the human body, especially sleep functions, circadian rhythm changes and pulmonary function. *Application accepted by Commissioner of Customs:* December 12, 1997.

*Docket Number:* 97–101. *Applicant:* Rutgers—The State University of New Jersey, Physics Department, P. O. Box 6999, Piscataway, NJ 08855. *Instrument:* Automated Thermal Conductivity and Specific Heat System, Model EMT 101. *Manufacturer:* Termis, Ltd., C.I.S. *Intended Use:* The instrument will be used for the study of the charge and spin states in correlated materials, which include tramri on metal oxides, rare-earth intermetallic compounds and hybridized narrow-gap semiconductors. The objective of this study is to understand the thermodynamic properties of strongly correlated materials. *Application accepted by Commissioner of Customs:* December 12, 1997.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 98–2628 Filed 2–2–98; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 012898A]**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Plan Development Team (CPSPDT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold public meetings.

**DATES:** The CPSPDT meeting will be held in Monterey, CA on Thursday, February 19, 1998 at 10:00 a.m and may go into the evening until business for the day is completed. The CPSAS meeting will be held on Wednesday, February 25 in Long Beach, CA at 10:00 a.m. and may go into the evening until business for the day is completed.

**ADDRESSES:** The meeting in Monterey will be held at the California Department of Fish and Game office, 20 Lower Ragsdale Drive, Suite 100, Monterey, CA. The meeting in Long Beach will be held at NMFS Southwest Regional Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA.

*Council address*: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Dr. Doyle Hanan; telephone: (619) 546–7170; or Dr. Larry Jacobson; telephone: (619) 546–7117.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the CPSPDT meeting is to continue revisions to the draft fishery management plan for coastal pelagic species for presentation to the Council at its March meeting, including analysis of options for limited entry, maximum sustainable yield control rules, essential fish habitat, and other matters related to the fishery management plan. The primary purpose of the CPSAS meeting is to review documents developed by the CPSPDT.

Although other issues not contained in this agenda may come before this Team/Subpanel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Team/Subpanel action will be restricted to those issues specifically identified in the agenda listed in this notice.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 28, 1998.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 98–2597 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–22–F

## COMMODITY FUTURES TRADING COMMISSION

### Application of Cantor Financial Futures Exchange as a Contract Market in US Treasury Bond, Ten-Year Note, Five-Year Note and Two-Year Note Futures Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures contracts.

**SUMMARY:** The Cantor Financial Futures Exchange, Inc. (''CFFE'' or ''Exchange'') has applied for designation as a contract market for the computer-based trading of US Treasury bond, ten-year note, five-year note and two-year note futures contracts. CFFE has been formed pursuant to an agreement between the New York Cotton Exchange (''NYCE'') and CFFE, LLC (''Cantor'') which is wholly owned by Cantor Fitzgerald, LP. Under the agreement, CFFE trading would be conducted on the same trading system that another Cantor Fitzgerald, LP subsidiary, Cantor Fitzgerald Securities, LLC, currently operates as an interdealer-broker in the US Treasury securities market. CFFE's regulatory responsibilities would be handled by NYCE. CFFE has not previously been approved by the Commission as a contract market in any commodity. Accordingly, in addition to the terms and conditions of the proposed futures contracts, the Exchange has submitted to the Commission a proposed trade-matching algorithm; proposed rules pertaining to CFFE governance, disciplinary and arbitration procedures, trading standards and recordkeeping requirements; and various other materials to meet the requirements for a board of trade seeking initial designation as a contract market. CFFE trades would be cleared and settled by a newly-formed clearing organization—the New York Board of Clearing, Inc. (''NYBOC''), a wholly-owned subsidiary of the Commodity Clearing Corporation (''CCC'') which is wholly owned by NYCE. NYBOC has submitted its proposed rules to the Commission in conjunction with CFFE's designation application. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Economic Analysis and the Division of Trading and Markets have determined to publish CFFE's proposal for public comment. The Divisions believe that publication of the proposal for comment at this time is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act. The Divisions seek comment regarding all aspects of CFFE's application and addressing any issues commenters believe the Commission should consider.

**DATES:** Comments must be received on or before April 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** With respect to questions about the terms and conditions of CFFE's proposed futures contracts, please contact Thomas M. Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; Telephone number: (202) 418–5278; Facsimile number: (202) 418–5527; or Electronic mail: tleahy@cftc.gov. With respect to questions about any of CFFE's other proposed rules or NYBOC's proposed rules, please contact David Van Wagner of the Division of Trading and Markets at the same address; Telephone number: (202) 418–5481; Facsimile number: (202) 418–5536; or Electronic mail: dvanwagner@cftc.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Description of Proposal

CFFE, a New York not-for-profit corporation, has applied for designation as a contract market for the computer-based trading of US Treasury bond, ten-year note, five-year note and two-year note futures contracts. CFFE has not been approved previously by the Commission as a contract market in any commodity. Thus, in addition to the terms and conditions of the proposed futures contracts, the Exchange has submitted, among other things, proposed trade-matching algorithm procedures and rules pertaining to CFFE governance, disciplinary and arbitration procedures, trading standards and recordkeeping requirements.

CFFE would be wholly-owned by CFFE Regulatory Services, LLC. Equity interest in CFFE Regulatory Services, LLC would be held entirely by NYCE (ten percent equity interest) and NYCE's members (ninety percent equity interest).[1] CFFE's contracts would trade over a computer-based trading system maintained by Cantor Fitzgerald Securities, LLC (the ''Cantor System''). Cantor Fitzgerald Securities, LLC is an interdealer-broker in the US Treasury securities market and it currently operates the Cantor System to match orders placed with it by broker-dealers and other customers. Although neither Cantor nor any of its affiliates would have any equity interest in CFFE, Cantor would collect a transaction fee for each trade executed at CFFE through the Cantor System.

CFFE would be governed by a thirteen-person board of directors—eight of whom would be appointed by Cantor and five of whom would be appointed by NYCE.[2] NYCE would be responsible for providing all of CFFE's regulatory services including its compliance, surveillance, arbitration and disciplinary programs.[3] Accordingly, all CFFE rule changes that involved regulatory procedures would have to be approved by NYCE's Board of Managers in addition to CFFE's board.

CFFE proposes to trade each of its four contracts from 7:30 a.m. to 5:30 p.m., New York time, on each business day. Under the proposal, all CFFE trading would be conducted through NYBOC clearing members and certain registered persons guaranteed by NYBOC clearing members (collectively referred to in CFFE's proposed rules as ''authorized traders''). Authorized traders would place orders, whether for their own or for their customers' accounts, by phoning CFFE terminal operators[4] located at a Cantor Fitzgerald Securities, LLC facility.[5] For each order, an authorized trader would be required

[1] NYCE would have the sole voting interest in CFFE Regulatory Services, LLC.

[2] Three of the eight CFFE directors appointed by Cantor would be public directors who could not be NYCE members or be employed by or affiliated with NYCE or Cantor.

[3] In this regard, CFFE's proposed rules would incorporate by reference certain NYCE rules, such as its rules governing arbitration and disciplinary procedures.

[4] All CFFE terminal operators would be jointly employed by CFFE and Cantor. Terminal operators would be registered as government securities representatives with the National Association of Securities Dealers and would be supervised by a registered floor broker.

[5] All phone conversations between NYCE authorized traders and CFFE terminal operators would be recorded and timed by a Cantor tape-recording system.

to provide the terminal operator with a customer or proprietary account identifier, the relevant contract and the quantity and price.[6] The CFFE terminal operator would promptly enter this information into the Cantor System via a terminal keyboard.

The Cantor System would match eligible CFFE orders according to a trade-matching algorithm that is similar to the algorithm that Cantor Fitzgerald Securities, LLC currently uses to match orders as an interdealer-broker in the government securities market. Under the algorithm, the Cantor System would post the best bid (best offer) available at any given time and its quantity. Any inferior bids (offers) that were posted earlier would be removed from the Cantor System, while inferior bids (offers) entered subsequently would be rejected by the Cantor System. Responsive offers (bids) would be matched with the best bid (best offer) on a time-priority basis at the designated bid (offer) price. Upon filling the best bid's (best offer's) stated quantity, the Cantor System would provide the authorized trader who made that bid (offer) with the exclusive right to buy (sell) all or part of the offers (bids) subsequently posted on the Cantor System at that same bid (offer) price for a pre-determined, limited period of time. During this exclusive period, the Cantor System would accept bids (offers) at the same price as the trader's best bid (best offer), and they would be matched on a time-priority basis to the extent possible after the exclusive period.

Upon the execution of a CFFE transaction, the terminal operator would provide an oral confirmation of the trade to the submitting authorized trader by telephone, and the authorized trader would record the details of the trade on an order ticket.[7] Upon execution of a trade, the Cantor System also would electronically transmit matched-trade data to NYBOC for clearing and settlement purposes. For each trade, NYBOC would transmit transaction information to the appropriate clearing members via the Trade Input Processing System (''TIPS''). [8] Clearing members would be required to accept or reject each trade within thirty minutes of its posting on TIPS.

The Cantor System also would transmit relevant trade data to NYCE each day for compliance and surveillance purposes.

### III. Request for Comments

Any person interested in submitting written data, views, or arguments on the proposal to designate CFFE should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. The Division seeks comment on all aspects of CFFE's application for designation as a new contract market, as well as NYBOC's proposal to serve as CFFE's clearing organization. Reference should be made to the CFFE application for designation as a contract market in US Treasury bond, ten-year note, five-year note and two-year note futures contracts. Copies of the proposed terms and conditions are available for inspection at the Office of the Secretariat at the above address. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100.

Other materials submitted by CFFE and NYBOC may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552), except to the extent that they are entitled to confidential treatment pursuant to 17 CFR 145.5 or 145.9. Requests for copies of such materials should be made to the Freedom of Information, Privacy and Sunshine Act compliance staff of the Office of the Secretariat at the Commission headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, DC, on January 29, 1998.

**John R. Mielke,**

*Acting Director.*

[FR Doc. 98–2622 Filed 2–2–98; 8:45 am]

BILLING CODE 6351–01–P

[6] Authorized traders also would be required to fill out an order ticket for each order.

[7] The terminal operators' duties would be limited to receiving and inputing orders from authorized traders and relaying back trade confirmations. Terminal operators could not maintain any sort of order book or deck, nor could they exercise any discretion over orders.

[8] NYBOC estimates that CFFE trades would be posted on TIPS within fifteen minutes of their execution.

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Thursday, February 12, 1998.

**PLACE:** 1155 21st St., N.W., Washington, D.C., Lobby Level Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

—Briefing by the National Futures Association

—Quarterly Objectives, 2nd Quarter

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 98–2705 Filed 1–30–98; 12:22 pm]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DOD.

**ACTION:** Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 6, 1998.

**ADDRESSES:** Written comments and recommendations on the information collection should be sent to Florida Atlantic University, Division of Sponsored Research, 777 Glades Road, Boca Raton, Florida 33431–0991.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection, please write to the above address or call Marilyn A. Ray, RN, Ph.D., Principal Investigator, Florida Atlantic University at (561) 297–2872.

*Title; Associated Form; and OMB Number:* Econometric Analysis (I,II) of the Nurse-Patient Relationship.

*Needs and Uses:* The survey information of the nurse-patient caring

relationship as an economic resource will be completed by registered nurses, people who have been patients in hospitals, and health care or nurse-executive administrators. The information is necessary to evaluate the economic value of the nurse-patient caring relationship and for the purposes of adequately allocating resources in the managed care, corporate, and competitive United States health care system.

*Affected Public:* Individuals or household.

*Annual Burden Hours:* 250.

*Number of Respondents:* 500.

*Responses per Respondent:* 1.

*Average Burden per Response:* 30 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Health care in the United States now exceeds 14% of the gross national product and for the society at large, health care has become too expensive. Managed health care is increasingly the norm and is expected to be operational nation-wide by the year 2000. Managed care consists of factors relating to cost containment, cost efficiency and management accountability outside and within health maintenance organizations and government organizations. Civilian managed care is based on market forces, is profit-driven and responds to shareholder demands. Professional nursing is impacted by the economic changes in the health care system. Decisions are being made by outside forces other than professional nurses about the nature and management of patient care. Increasingly, lower salaried, non-professional assistive personnel are being used in hospitals to care for patients. The quality of patient care is seriously affected.

Registered Nurses are committed to continue to provide direct, quality care to patients. Health outcomes, such as, improved physical and emotional well-being are affected by direct, knowledgeable caring of the nurses. Overall, with the continuation of the use of Registered Nurses in direct care to patients, costs will decrease and the economic status of both for profit and not-for-profit hospitals in communities throughout the United States will improve. This survey will attain results to determine degree to which the nurse-patient relationship as an economic resource can be assessed in the contemporary managed health care system.

Dated: January 28, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98–2507 Filed 2–2–98; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Associated Form, and OMB Number:* Air Force ROTC Scholarship Nomination; AFROTC Form 36; OMB Number 0701–0103.

*Type of Request:* Reinstatement.

*Number of Respondents:* 500.

*Responses per Respondent:* 1.

*Annual Responses:* 500.

*Average Burden per Response:* 42 minutes.

*Annual Burden Hours:* 350.

*Needs and Uses:* The information collection requirement is used by the Air Force to identify the best-qualified applicants for the scholarship, providing for a ''whole person'' evaluation. Respondents are college students between the ages of 18 and 29 years. AFROTC Form 36 collects general identification and academic performance data, academic aptitude, and Professor of Aerospace Studies (PAS) evaluation of Air Force ROTC Scholarship applicant's performance and potential. It is used by AFROTC Scholarship Selection Boards to determine eligibility and competitiveness for award of scholarships involving expenditures of Federal funds.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondents's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 28, 1998.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98–2505 Filed 2–2–98; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Associated Form, and OMB Number:* Indebtedness of Military Personnel—Involuntary Allotments; DD Form 2653; OMB Number 0704–0367.

*Type of Request:* Reinstatement.

*Number of Respondents:* 8,400.

*Responses per Respondent:* 1.

*Annual Responses:* 8,400.

*Average Burden per Response:* 30 minutes.

*Annual Burden Hours:* 4,200.

*Needs and Uses:* Title 5 U.S.C. 5220(a)(k) directs the establishment of provisions for the involuntary allotment of the pay of a member of the Uniformed Services for indebtedness owed a third party as determined by the final judgment of a court, and as further determined by competent military or executive authority to be in compliance with the Soldiers' and Sailors' Civil Relief Act of 1940. These provisions must also take into consideration the absence of a member of the Uniformed Services from appearance in a judicial proceeding if the absence results from the exigencies of military duty. The DD Form 2653, ''Involuntary Allotment Application,'' provides the DOD reviewing authority with the data necessary to act on requests from the public for assistance in the collection of debts.

*Affected Public:* Individuals or households; Business or Other For-Profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed

information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 28, 1998.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98–2506 Filed 2–2–98; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Historical Records Declassification Advisory Panel

**AGENCY:** Department of Defense, Historical Advisory Committee.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the February 6, 1998, meeting of the Historical Records Declassification Advisory Panel, is canceled. The meeting notice was published in the **Federal Register** January 21, 1998 (63 FR 3096).

**FOR FURTHER INFORMATION CONTACT:** Cynthia Kloss, Room 3C281, Office of the Deputy Assistant Secretary of Defense (Intelligence & Security), Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 6000 Defense Pentagon, Washington, DC 20301–6000, telephone (703) 695–2289/2686.

Dated: January 28, 1998.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98–2504 Filed 2–2–98; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 19, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 6, 1998.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 28, 1998.

**Gloria Parker,**

*Deputy Chief Information Officer, Office of the Chief Information Officer.*

**Office of Educational Research and Improvement.**

*Type of Review:* Emergency.

*Title:* Technology Innovation Challenge Grant Program: Professional Development.

*Abstract:* The FY 1998 Technology Innovation Challenge Grant competition will focus on professional development by providing support to consortia that are developing, adapting, or expanding applications of technology training for teachers and other educators to improve instruction.

*Additional Information:* The Department is requesting the emergency clearance because of an unanticipated change in program direction. The new direction, received in October 1997 through Conference Report language accompanying the FY 1998 appropriation, substantially changed the focus of the program. Since that time, Department staff have been conferring both internally and with congressional staff on how best to move the direction of the program from one in which there is a broad perspective on supporting the best innovative approaches to integrating technology in the schools to

one in which there is a concerted focus on addressing the growing need for the professional development of teachers in using technology to improve instruction. In requesting this clearance, ED's primary concern is to allow applicant consortia adequate time to prepare strong applications given the significant change in program focus. In addition, we are concerned about having sufficient time to organize and use a very strong, but time-consuming three-tier review process for evaluating applications for funding. Requested approval date is February 19, 1998.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 350.

Burden Hours: 8,750.

[FR Doc. 98–2530 Filed 2–2–98; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 5, 1998.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 28, 1998.

**Gloria Parker,**

*Deputy Chief Information Officer, Office of the Chief Information Officer.*

### Office of the Under Secretary

*Type of Review:* New.

*Title:* Targeting and Resource Allocation Study.

*Abstract:* This study will examine targeting and resource allocation in major federal education programs, including Title I, Title II (Eisenhower Professional Development), Title IV (Safe and Drug-Free Schools and Communities), Title VI, and Goals 2000. The study will examine how resources are allocated among various strategies for improving student achievement, how the use of resources varies across schools and districts (e.g., by school poverty levels and size of allocation), and changes in the targeting of funds since the reauthorization of the Elementary and Secondary Education Act (ESEA) in 1994. The study will examine the extent to which funds are being used for strategies highlighted in Goals 2000 and the reauthorized Elementary and Secondary Education Act, including professional development, extended time, parent involvement, coordinated services, and schoolwide approaches. The study will obtain information on the kinds of expenditures, staff, and activities are typically associated with different strategies; and how resource allocation decisions are made. The study will also examine the amount of federal funds retained at the state and district levels for administrative and other purposes, how those funds are used, and how much of the funds reach the school level.

*Additional Information:* The final report for this study is expected to be completed in January 1999. Findings from this study will also be included in the final report of the National Assessment required under Sections 1501(a) and 14701(b)(1)(B) of the Elementary and Secondary Education Act (also due in January 1999).

*Frequency:* One time.

*Affected Public:* State education agencies, school districts and schools.

*Reporting and Recordkeeping Hour Burden*:

Responses: 6,097.

Burden Hours: 6,000.

[FR Doc. 98–2531 Filed 2–2–98; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PR98–6–000]**

### Arkansas Oklahoma Gas Corporation; Notice of Petition for Rate Approval

January 28, 1998.

Take notice that on January 16, 1998, Arkansas Oklahoma Gas Corporation (AOG) filed pursuant to Sections 284.224(e)(1) and 284.123(b)(2) of the Commission's regulations, and pursuant to the Commission's order, issued July 18, 1995 in Docket No. PR95–4–000, a petition for approval to maintain its existing maximum rate of $0.2329 per MMBtu, plus 2.766 percent for company use and lost and unaccounted for gas, applicable to all of AOG's existing and future transportation services provided under its Order No. 63 blanket certificate, as more fully described in the petition filed herewith, and which is on file with the Commission and open to public inspection. This rate will be applicable to the transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

AOG states it is not proposing to change the rates actually being charged in its existing Order No. 63 blanket certificate transportation arrangements. Rather, AOG states that it is only seeking to maintain the existing ceiling

rate up to which AOG and its transportation customers may agree upon in any future negotiations.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any persons desiring to participate in this rate proceeding must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed with the Secretary of the Commission on or before February 12, 1998. Copies of the petition are on file with the Commission and are available for public inspection.

**Linwood A. Watson Jr.,**

*Acting Secretary.*

[FR Doc. 98–2545 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–406–000]**

## CNG Transmission Corporation; Notice of Informal Settlement Conference

January 28, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, February 12, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact William J. Collins at (202) 208–0248 or David R. Cain at (202) 208–0917.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2548 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER98–1236–000]**

## Consolidated Edison Company of New York, Inc.; Notice of Filing

January 28, 1998.

Take notice that on January 8, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 123, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for an increase in the monthly carrying charges.

Con Edison states that a copy of this filing has been served by mail upon CH.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2543 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–117–000]**

## K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

January 28, 1998.

Take notice that on January 23, 1998, K N Interstate Gas Transmission Co. (KNI) tendered for filing, as part of its FERC Gas Tariff, Third Revised Volume Nos. 1–A and 1–B and Second Revised Volume Nos. 1–C and 1–D, the following tariff sheets to become effective March 1, 1998.

**Third Revised Volume No. 1–A**

Second Revised Sheet No. 3
Second Revised Sheet No. 4–A
Second Revised Sheet No. 4–B
Second Revised Sheet No. 4–C
Fifth Revised Sheet No. 4–D
Second Revised Sheet No. 4–E
Second Revised Sheet No. 4–F

**Third Revised Volume No. 1–B**

First Revised Sheet No. 24
First Revised Sheet No. 68
First Revised Sheet No. 69
First Revised Sheet No. 70
First Revised Sheet No. 71
First Revised Sheet No. 79
First Revised Sheet No. 80
First Revised Sheet No. 81
First Revised Sheet No. 82
First Revised Sheet No. 85
First Revised Sheet No. 86

**First Revised Volume No. 1–C**

Tenth Revised Sheet No. 4

**First Revised Volume No. 1–D**

First Revised Sheet No. 21
First Revised Sheet No. 66
First Revised Sheet No. 67
First Revised Sheet No. 68
First Revised Sheet No. 70
First Revised Sheet No. 71

KNI states that such revised tariff sheets reflects proposed changes in rates and as well as changes to miscellaneous tariff provisions related to natural gas services performed by KNI.

KNI is filing the revised tariff sheets to reflect adjustments to its rates pursuant to Section 4 of the Natural Gas Act (NGA), and to reflect miscellaneous changes to its tariff provisions. Specifically, the proposed general rate filing would increase KNI's revenues from jurisdictional transportation and storage services by approximately $30.2 million, based on the twelve month period ended October 31, 1997, as adjusted, compared with existing rates.

KNI states that the proposed adjustments to rates are attributable primarily to an increase in its cost of

service resulting from increased rate base as a result of additional plant investment. Increase in rate base related expenses, such as depreciation, return on income taxes and other taxes are reflected in the proposed cost of service, as well as increased operations and maintenance expenses.

In addition to reflecting the revised cost of service, KNI states that its proposed rates have been developed using billing determinants and throughput levels that will allow KN to collect revenues that are equal to the proposed cost of service for performing transportation and storage services.

KNI has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to be heard or protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2549 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–199–011]**

### Mississippi River Transmission Corporation; Notice of Refund Report

January 28, 1998.

Take notice that on January 16, 1998, Mississippi River Transmission Corporation (MRT) filed its report of refunds in the above referenced docket for the period October 1, 1996 through June 30, 1997.

MRT states that a December 20, 1997, it distributed, to eligible Consenting Parties refunds covering the period October 1, 1996 through June 30, 1997, including interest calculated in accordance with Section 154.501(d) of the Commission's Regulations, 18 CFR 154.501(d). MRT also states that these refunds reflect the difference, including interest, between the total payments actually made to MRT each firm and interruptible customer that is a Consenting Party and the Period I Settlement Rates established pursuant to the Settlement dated July 25, 1997.

MRT states that a copy of this report is being mailed to each of its affected customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 4, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2547 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER97–678–001 and ER97–680–001]**

### New England Power Company; Notice of Filing

January 28, 1998.

Take notice that on December 24, 1997, New England Power Company submits for filing revised pages to the Stipulations and Agreements filed in these consolidated dockets, as well as its proposed accounting for stranded costs and related revenues in compliance with the Commission's November 26, 1997, letter order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commisson and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2540 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER95–1686–005; ER96–496–005]**

### Northeast Utilities Service Company; Notice of Filing

January 28, 1998.

Take notice that Northeast Utilities Service Company (NUSCO), on November 28, 1997, tendered for filing a compliance refund report in compliance with the Commission's directive in an October 7, 1997, letter order in the captioned dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2539 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER98–1114–000]**

### PP&L, Inc.; Notice of Filing

January 28, 1998.

Take notice that on January 9, 1998, PP&L, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protest should be filed on or before February 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2542 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–4663–000]**

### Public Service Company of New Mexico; Notice of Filing

January 28, 1998.

Take notice that on December 19, 1997, Tucson Electric Company (TEP), on behalf of itself and Public Service Company of New Mexico (PNM), tendered for filing the Amended Interconnection Agreement between Public Service Company of New Mexico and Tucson Electric Power Company. The Amended Agreement provides for the interconnected operation of the transmission systems of PNM and TEP and allows for the sharing of contingency reserves for emergencies between TEP and PNM.

The parties have requested waiver of notice to permit the Amended Agreement to become effective as of December 20, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2541 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP98–182–000]**

### Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

January 28, 1998.

Take notice that on January 13, 1998, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed a prior notice request with the Commission in Docket No. CP98–182–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point in Worcester County, Massachusetts, under Tennessee's blanket certificates issued in Docket Nos. CP82–413–000 and CP82–115–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Tennessee proposes to construct and operate a delivery point on its system for Millennium Power Partners, L.P. (Millennium) in Worcester County. Tennessee states that it would install, own, operate, and maintain two eight-inch hot taps; approximately 100 feet of 10-inch diameter interconnecting pipe between the tap and the meter; measurement facilities; electronic gas measurement equipment; flow control devices; a chromatograph; communications equipment; and approximately 2,000 feet of 10-inch diameter lateral piping downstream of the meter. Tennessee also proposes to perform site preparation and improvements, install an all-weather access road, and provide electrical and telephone service. Tennessee states that Millennium would reimburse Tennessee for the estimated $831,600 in construction cost for the proposed facilities.

Tennessee states that it would deliver up to 60,000 dekatherms of natural gas per day to Millennium at the proposed delivery point. Tennessee that it would transport gas on an interruptible basis pursuant to Rate Schedule IT of Tennessee's FERC Gas Tariff or on a firm basis through other third-party transportation agreements with existing Tennessee shippers. Tennessee further states that the natural gas volumes it would deliver to Millennium after the construction of the proposed delivery point would not exceed the total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2538 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP95–64–003, RP96–292–002 and RP98–14–000]**

### Tennessee Gas Pipeline Company; Notice of Technical Conference

January 28, 1998.

The above referenced dockets relate to Tennessee Gas Pipeline Company's (Tennessee) Annual Cashout Reports. Parties have filed comments raising concerns with the reports. In order to resolve the issues in these proceedings, the Commission Staff is convening a Technical Conference among the interested parties.

Take notice that the conference will be held on Thursday, February 26, 1998, beginning at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Tennessee and interested parties should be prepared to discuss in detail the cashout reports and address the specific concerns raised by the parties in these proceedings. Such discussion should address what elements of system inventory should be utilized in the calculation of the cashout reports and

provide support for the specific levels included in the reports. In addition, Tennessee should be prepared to explain the reasons for the delay in filing its reports and the basis for the out-of-period adjustments to its 1994 and 1995 reports.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2546 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Environmental Compliance and Applicant Environmental Report Preparation Training Courses

January 28, 1998.

The Office of Pipeline Regulation (OPR) staff will conduct two sessions of its Environmental Compliance Training Course and the Environmental Report Training Course in March and May of this year.

These courses are a result of the positive response to our outreach training courses held since 1992. We encourage interested organizations and the public to take advantage of the courses to gain an understanding of the requirements and objectives of the Commission in ensuring compliance with all environmental certificate conditions and meeting its responsibilities under the National Environmental Policy Act and other laws and regulations. We also encourage feedback, either at the courses or in reply to this notice, on how we can improve the courses.

### Environmental Report Preparation Course

The Environmental Report Preparation Course presentation and the manual focus primarily on Section 7 filings. However, the course manual will address the following topics:

A. The types of projects that require environmental filings.
   1. Natural Gas Act section 7
   2, Natural Gas Policy Act filings
   3. Section 2.55 replacements
B. The filings required for each type of project.
C. Information to include in each filing.
D. Potential time saving procedures.
   1. Applicant-prepared DEA
   2. Third-party EA or EIS

The staff intends the manual to be a sourcebook for preparing environmental filings under section 7 of the Natural Gas Act.

If you have specific questions related to the subject matter of this course, or if you would like the course to address a particular item, please call Mr. John Leiss at (202) 208–1106.

This one-day Environmental Report Preparation Course will be held on the dates and at the locations shown below. Attendees must call the number listed for the hotel by the reservation deadline and identify themselves as Federal Energy Regulatory Commission seminar attendees to receive the discounted group rate.

Session: March 24
Location: Sheraton North, Shore Inn, 933 Skokie Blvd., Northbrook, Illinois 60062, 1–800–325–3535, (847) 498–6500
Reservations by: March 2
May 12
Crown Plaza, 4255 South Paradise Road, Las Vegas, Nevada 89109
1–800–HOLIDAY, (702) 369–4400, April 11

### Environmental Compliance Training Course

The two-day Environmental Compliance Training Course will include the following topics:

A. Post-certificate clearance filings.
B. Environmental inspection as it relates to:
   1. Right-of-way preparation;
   2. Temporary erosion control;
   3. Cultural resources;
   4. Waterbody crossings;
   5. Wetland construction;
   6. Residential area construction;
   7. Right-of-way restoration; and
   8. Techniques for environmental compliance.

The Environmental Compliance Training Course will be held on the dates and at the locations shown below. Attendees must call the numbers listed for the hotels by the reservation deadline and identify themselves as FERC seminar attendees to receive the discounted group rate.

Session: March 25–26
Location: Sheraton North, Shore Inn, 933 Skokie Blvd., Northbrook, Illinois 60062, 1–800–325–3535, (847) 498–6500
Reservations by: March 2
May 13–14
Crown Plaza, 4255 South Paradise Road, Las Vegas, Nevada 89109
1–800–HOLIDAY, (702) 369–4400, April 11

### Pre-Registration

The OPR staff and Foster Wheeler Environmental Corporation, the Commission's environmental support contractor for natural gas projects, will conduct the training. There is no fee for the courses, but you must pre-register because space is limited.

If you would like to attend either of these courses, please call the telephone number listed below to obtain a pre-registration form.[1]

**Note:** If you plan to attend both the environmental report preparation session and the subsequent environmental compliance training session, you must pre-register separately for each (only one form is needed per location). Attendance will be limited to the first 150 people to pre-register in each course. Call or FAX requests for pre-registration forms to: Ms. Donna Connor, c/o Foster Wheeler Environmental Corporation, 470 Atlantic Avenue, Boston, MA 02210, Telephone or FAX (Menu driven): (508) 384–1424.

You will receive confirmation of pre-registration and additional information before the training course(s).

Additional training may be offered in the future. Please indicate whether you would like these courses to be offered again, or if you are interested in any other courses with different topics or audiences. Please indicate your preferences for location and time of year. Suggestions on format are welcome.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2536 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–99–000]**

## Algonquin Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed DLP Dighton Project and Request for Comments on Environmental Issues

January 28, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities, about 1.5 miles of 12-inch-diameter loop, horsepower modifications at two existing compressor stations, a new meter station, and appurtenant facilities, proposed in the DLP Dighton Project.[1]

[1] The pre-registration forms referenced in this notice are not being printed in the **Federal Register**. Copies of the forms were sent to those receiving this notice in the mail.

[1] Algonquin Gas Transmission Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

**Summary of the Proposed Project**

Algonquin Gas Transmission Company (Algonquin) proposes to expand the capacity of its facilities to transport an additional 33,000 dekatherms per day of natural gas to the approved Dighton Power Associates Limited Partnership (DLP) power plant. Algonquin seeks authority to construct and operate:

- 1.5 miles of 12-inch-diameter loop in the towns of Norwich and Montville, Connecticut;
- Upgrade two compressor units at its Southeast Compressor Station from 4,250 horsepower (hp) to 4,700 hp each in Putnam County, New York;
- Upgrade two compressor units at its Burrillville Compression Station from 5,500 hp to 5,700 hp each in Providence County, Rhode Island;
- A new Dighton Meter Station and appurtenances at the approved DLP power plant in Dighton, Massachusetts;
- New tap valves on its G–1 Line and G–1 Loop and 40 feet of 8-inch-diameter connecting pipeline between the new valves and proposed Dighton Meter Station; and
- Modifications to its existing Salem Turnpike and Montville Meter Stations in Norwich and Montville, Connecticut, respectively.

DLP is currently constructing a 170 megawatt power plant and appurtenances in Dighton. The Dighton Meter Station and appurtenances would be constructed within the non jurisdictional power plant site.

The location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

**Land Requirements for Construction**

Construction of the proposed facilities would require about 14.3 acres of land (including 5.5 acres of existing pipeline right-of-way). Following construction, about 3.4 acres would be maintained as new permanent pipeline right-of-way. The remaining 5.4 acres of land would be restored and allowed to revert to its former use.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

**The EA Process**

The national Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Conveniences and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Land use.
- Cultural resources.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

**Currently Identified Environmental Issues**

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Algonquin. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential effect on Trading Cove Brook and Stony Brook during crossing by the dry-ditch method.
- The permanent conversion of about 0.25 acre of wooded wetland to open wetland.

Also, we have made a preliminary decision to not address the impact of the nonjurisdictional facility. We will briefly describe its location and status in the EA.

**Public Participation**

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Send *two* copies of your letter to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label *one* copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP98–99–000; and
- Mail your comments so that they will be received in Washington, DC on or before March 2, 1998.

If you are interested in obtaining procedural information please write to the Secretary of the Commission.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor.'' Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues

have been viewed as good cause for late intervention.

You do not need intervenor status to have your comments considered.

**Lindwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2537 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 3195–068]**

## Sayles Hydro Associates; Notice of Availability of Final Environmental Assessment

January 28, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed an application to surrender the license for the Sayles Flat Hydroelectric Project, No. 3195–068. The Sayles Flat Project is located on the South Fork American River in El Dorado County, California. A Final Environmental Assessment (FEA), was prepared for the surrender request. The FEA finds that approving the surrender would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2544 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Public Outreach Meeting (Charlotte, North Carolina)

January 28, 1998.

The Office of Hydropower Licensing will hold a public Outreach Meeting in Charlotte, North Carolina on Tuesday, February 24, 1998. The Outreach Meeting is scheduled to start at 9:00 a.m. and finish at 5:00 p.m.

The purpose of the Outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties with the Commission's hydropower licensing program. The topics for the Outreach Meeting are pre-licensing, licensing, and post-licensing procedures for hydroelectric projects in North Carolina and South Carolina whose licenses expire between calendar years 2000 and 2010.

Staff from the Commission's Office of Hydropower Licensing will preside over the meetings.

The location of the Outreach Meeting is: The Westin, Charlotte, 222 East Third Street, Charlotte, NC 28202, (704) 377–1500, (704) 358–4890 *fax.

If you plan to attend, notify Ron McKitrick, Eastern Outreach Coordinator, fax: 202–219–2152; telephone: 202–219–2783.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 98–2535 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5957–8]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting and Recordkeeping Requirements Under the Perfluorocompound (PFC) Emission Reduction Partnership for the Semiconductor Industry EPA ICR No. 1823.01

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Requirements Under the Perfluorocompound (PFC) Emission Reduction Partnership for the Semiconductor Industry EPA ICR No. 1823.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before March 5, 1998.

**FOR FURTHER INFORMATION OR A COPY CALL:** Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1823.01.

**SUPPLEMENTARY INFORMATION:**

*Title:* Reporting and Recordkeeping Requirements Under the Perfluorocompound (PFC) Emission Reduction Partnership for the Semiconductor Industry (OMB Control No. 2060-NEW; EPA ICR No. 1823.01). This is a new collection.

*Abstract:* In April 1993, President Clinton issued the Climate Change Action Plan, which establishes the nation's commitment to returning U.S. greenhouse gas emissions to their 1990 levels by the year 2000. EPA's PFC Emission Reduction Partnership for the Semiconductor Industry is an important voluntary program contributing to the overall reduction in greenhouse gas emissions. The PFC Emission Reduction Partnership for the Semiconductor Industry, along with ENERGY STAR Buildings, Green Lights, ENERGY STAR Computers, and other EPA Programs is a voluntary program aimed at preventing pollution rather than controlling it after its creation. These programs focus on reducing greenhouse gas emissions.

EPA has developed this ICR to obtain authorization to collect information from Companies participating in the PFC Emission Reduction Partnership. By participating in the program, a Company agrees to endeavor to reduce PFC emissions. In the Partnership, a company will prepare an annual report to be submitted to a designated law firm that provides an overall estimate of PFC emissions, and a normalized PFC emission rate for its U.S. facilities. Information on Company-specific PFC emissions is aggregated into an industry-wide annual report, and used in combination with information on Companies' normalized rates of PFC emissions (submitted on a blind basis) to evaluate the overall PFC emission reductions achieved by the program.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 9/2/97 (62 FR 46264); 1 comment was received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 570 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Semiconductor manufacturing companies.

*Estimated Number of Respondents:* 30.

*Frequency of Response:* 1/year.

*Estimated Total Annual Hour Burden:* 17,100 hours.

*Estimated Total Annualized Cost Burden:* $539,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1823.01 and OMB Control No. 2060-NEW in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 27, 1998.

**Richard T. Westlund,**

*Acting Director, Regulatory Information Division.*

[FR Doc. 98–2489 Filed 2–2–98; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5957–9]**

## Toxic Chemicals; TSCA Inventory Update; Submission of ICR No. 1011.04 to OMB; Agency Information Collection Activities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Submission to OMB.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Partial Updating of TSCA Inventory Data Base, Production and Site Reports [EPA ICR No. 1011.04; OMB Control No. 2070–0070] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB reinstate for 3 years the previous approval for this ICR. This ICR was last approved on May 27, 1993, and that approval expired on May 31, 1995. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on August 19, 1997 (62 FR 44125). EPA received comments from the Chemical Specialties Manufacturers Association (CSMA) on this ICR during the comment period. These comments are addressed in an attachment to the ICR.

**DATES:** Additional comments may be submitted on or before March 5, 1998.

**FOR FURTHER INFORMATION OR A COPY CONTACT:** Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: ''farmer.sandy@epamail.epa.gov,'' or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1011.04.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1011.04 and OMB Control No. 2070–0070, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mailcode: 2137) 401 M Street, S.W., Washington, DC 20460.

And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:**

*Review Requested:* This is a request to reinstate a previously approved information collection activity, which occurs only every four years, pursuant to 5 CFR 1320.12.

*ICR Numbers:* EPA ICR No. 1011.04; OMB Control No. 2070–0070.

*Current Expiration Date:* The approval for this ICR expired on May 31, 1995.

*Title:* Partial Updating of TSCA Inventory Data Base, Production and Site Reports.

*Abstract:* Section 8(a) of the Toxic Substances Control Act (TSCA) requires EPA to compile and keep current a complete list of chemical substances manufactured or processed in the United States. EPA updates this inventory of chemicals every four years by requiring manufacturers, processors and importers to provide production volume, plant site information and site-limited status information. This information allows EPA to identify what chemicals are or are not currently in commerce and to take appropriate regulatory action as necessary. EPA also uses the information for screening chemicals for risks to human health or the environment, for priority-setting efforts, and for exposure estimates.

Responses to the collection of information are mandatory (see 40 CFR part 710).

*Burden Statement:* The annual public reporting burden for this collection of information is estimated to average 11.5 hours per response for an estimated 3,000 respondents making one or more submissions of information. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR Part 9.

*Respondents/Affected Entities:* Entities potentially affected by this action are persons who manufacture,

process or import chemical substances in the United States.

*Estimated No. of Respondents:* 3,000.

*Estimated Total Annual Burden on Respondents:* 34,500 hours.

*Frequency of Collection:* On occasion.

*Changes in Burden Estimates:* Since this is a reinstatement of a previously approved ICR for which OMB clearance has expired, the total burden for this activity, 34,500 hours, may be considered to be an increase in the total ICR burden currently approved by OMB.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: January 27, 1998.

**Richard T. Westlund,**

*Acting Director, Regulatory Information Division.*

[FR Doc. 98–2490 Filed 2–2–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–400124; FRL–5769–4]**

## Public Meetings on the Toxics Release Inventory Reporting Form

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meetings.

**SUMMARY:** EPA will hold approximately nine public meetings to solicit comments relating to the Toxics Release Inventory (TRI) reporting form, the Form R. The purpose of the meetings is to obtain comments from stakeholders on ways to improve the type of right-to-know information available to communities and to help streamline right-to-know reporting to ease the paperwork burden for businesses affected by the requirements. Since the Agency is looking for ways to help reduce the reporting burden, these meetings will also provide an opportunity for affected entities to participate in the development of a rule clarifying the Pollution Prevention Act reporting requirements currently contained in Section 8 of the Form R. In particular, the Agency is interested in comments and suggestions regarding the burden of Section 8 reporting on small entities. The first three of these public meetings were held in November 1997. This notice announces two upcoming meetings. Additional meeting dates will be announced through future **Federal Register** notices.

**DATES:** The meetings will take place:

1. Tuesday, February 24, 1998, 9 a.m. to 12 p.m. Adam's Mark Dallas, Seminar Theater, 400 North Olive, Dallas, TX. Participants must register to speak by 5 p.m., Thursday, February 19, 1998.

2. Thursday, April 2, 1998, 9 a.m. to 12 p.m. USEPA Region II, 290 Broadway, NY, NY, Conference Room D, 27th Floor. Participants must register to speak by 5 p.m., Friday, March 27, 1998.

**ADDRESSES:** All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G-099, East Tower, Washington, DC 20460. Each comment must bear the docket control number ''OPPTS–400123.''

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

**FOR FURTHER INFORMATION CONTACT:** Michelle Price, (Mail Stop 7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260–3372, fax number: (202) 401–8142, e-mail: price.michelle@epamail.epa.gov. To register to speak via conference call or in person, contact Debra Jones (TASCON) at (301) 907–3844.

**SUPPLEMENTARY INFORMATION:**

### I. Background

EPA plans to hold approximately nine public meetings to solicit comments relating to the Toxics Release Inventory (TRI) reporting form, the Form R. The first three meetings took place in November 1997. The docket number for the November meetings is ''OPPTS-400117'' and the comments presented at these meetings are available for review as described in Unit II. of this document.

The purpose of the meetings is to obtain comments from stakeholders on ways to improve the type of right-to-know information available to communities and to help streamline right-to-know reporting to ease the paperwork burden for businesses affected by the requirements. Topics for comment include the following: format of the Form R; nomenclature used in the Form R; opportunities for burden reduction in both the Form R and Form A; additional clarification of the elements in the Form R; and EPA's presentation of the data in public information documents.

These public meetings are also intended to help serve the Agency's effort to assure that the concerns of small entities are addressed in the development of regulations. The Agency is preparing a proposed rule to clarify the Pollution Prevention Act reporting requirements currently contained in Section 8 of the Form R, and would like to receive comments from affected entities regarding those reporting requirements. In particular, the Agency is interested in comments and suggestions regarding the reporting burden on small entities.

The sections of the Form R that EPA would like specific comment on are Sections 5, 6, and 8. In Section 5, there have been a number of issues raised with regard to the definition of ''release,'' particularly with respect to Class I underground injection wells and RCRA Subtitle C landfills. Several commenters believe that EPA's interpretation of the EPCRA definition of ''release'' will lead to the misperception that a reported EPCRA section 313 ''release'' necessarily results in an actual exposure of people or the environment to a toxic chemical. The Agency would like to hear suggestions on ways to collect and disseminate the data that are consistent with the Agency's interpretation of the EPCRA definition of ''release'' and would address the concerns raised regarding public misperception.

There have also been a number of issues raised with regard to the reporting of toxic chemicals in wastes in Section 8 of the Form R. Section 8 collects information on waste managed at the facility whether or not the waste was generated at the reporting facility. Some individuals are concerned about public misperception of the data in Section 8 because of the focus on the

amount of waste managed at the facility, not waste generated. EPA would like comments on ways to change Section 8 of the Form R which would continue to allow the user to assess wastes managed by the facility but would minimize the perception that the wastes reported in section 8 were generated by the reporting facility.

On any of the above issues, EPA would like to receive specific comments from interested parties for changes, modifications, deletions, and/or additions of data elements to the Form R and the Form A. These issues are outlined in greater detail in an issue paper available on the TRI Home Page at http://www.epa.gov/opptintr/tri under the heading ''TRI Stakeholder Dialogue'' and the subheading ''TRI Public Meetings.''

Individuals wishing to attend these meetings or participate via conference call must sign-up in advance in order to assure that all participants have an opportunity to speak. Depending on the number of individuals registered, oral presentations or statements will be limited to approximately 5 to 15 minutes. To register, contact Debra Jones (TASCON) at (301) 907–3844. For those who cannot travel to the public meeting location, there will be 10 conference call lines available on a first come, first serve basis for individuals to provide comment. When registering, give your name, organization, postal (and electronic, if any) mailing address, telephone and fax numbers. If there is insufficient interest in any of the meetings, that meeting may be canceled. Individuals registered will be notified in the event a meeting is canceled. The Agency bears no responsibility for attendees' decision to purchase nonrefundable transportation tickets or accommodation reservations.

### II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number ''OPPTS–400123'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPPTS–400123.'' Electronic comments on this action may be filed online at many Federal Depository Libraries.

### List of Subjects

Environmental protection, Community right-to-know.

Dated: January 26, 1998.

**Susan B. Hazen,**

*Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 98–2495 Filed 2–2–98; 8:45 am]

BILLING CODE 6560–50–F

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DEPARTMENT OF JUSTICE

### Office of Special Counsel for Immigration Related Unfair Employment Practices; Coordination of Functions; Memorandum of Understanding

**AGENCIES:** Equal Employment Opportunity Commission and Office of Special Counsel for Immigration Related Unfair Employment Practices, Department of Justice.

**ACTION:** Notice.

**SUMMARY:** The Equal Employment Opportunity Commission (''EEOC'') and the Office of Special Counsel for Immigration Related Unfair Employment Practices, Department of Justice (''Office of Special Counsel''), have adopted as final a Memorandum of Understanding which replaces an earlier 1989 Memorandum between the two agencies, published at 54 FR 32499, Aug. 8, 1989. Among other changes, the new Memorandum has been updated to reflect amendments to the Immigration and Nationality Act. As with the earlier Memorandum, the Agreement makes each agency the agent of the other for the sole purpose of receiving discrimination charges under Title VII of the Civil Rights Act of 1964 and section 102 of the Immigration Reform and Control Act of 1986. The Agreement also provides for interagency coordination of charge processing activities to promote efficiency and avoid duplication in the administration and enforcement of these statutes.

**EFFECTIVE DATE:** February 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Anita Stephens, Office of Special Counsel for Immigration Related Unfair Employment Practice, U.S. Department of Justice, P.O. Box 27728, Washington, D.C. 20038–7728; (800) 255–7688 (toll free) or (202) 616–5594; or (800) 237–2515 (toll free TDD) or (202) 616,5525 (TDD). At the Equal Employment Opportunity Commission, contact Carol R. Miaskoff, Assistant Legal Counsel for Coordination, Office of Legal Counsel, EEOC, 1801 ''L'' Street, N.W., Washington, D.C. 20507; (202) 663–4689 (Voice) or 663–7026 (TDD).

**SUPPLEMENTARY INFORMATION:** The Memorandum of Understanding was modified in response to amendments to the Immigration and Nationality Act that added document abuse and intimidation or retaliation as unfair immigration related practices. Other changes have been made based on a reexamination of the 1989 Memorandum and consideration of the agencies' experience under it. Among the changes included in the new Memorandum of Understanding are:

1. The Memorandum's ''Guidelines for EEOC Staff'' and ''Guidelines for Attorneys in the Office of Special Counsel'' (''Guidelines'') now include referral procedures for charges alleging unfair document practices. These changes reflect 1990 amendments to the Immigration and Nationality Act that added document abuse as an unfair immigration related practice.

2. The Guidelines' referral procedures for charges alleging retaliation have been broadened and consolidated. These changes enhance the clarity of the agreement and reflect 1990 amendments to the Immigration and Nationality Act that added intimidation or retaliation as an unfair immigration related practice.

3. The Memorandum and Guidelines provide that charges shall not be referred from one agency to the other if the charging party has declined referral. Thus, the charging party retains control over the decision whether to file a charge with each agency.

4. The Memorandum and Guidelines specify that charges alleging individual act, pattern or practice, or class discrimination are encompassed by the procedures therein.

5. The Guidelines for EEOC Staff no longer include as a condition for referral of charges to the Office of Special Counsel a requirement that the EEOC ask whether the charging party is a U.S. citizen, U.S. national, or work-authorized alien. Information regarding immigration status is generally not relevant under the statutes enforced by

the EEOC, and Office of Special Counsel staff are better suited to make determinations about a charging party's immigration status.

6. Lastly, the Guidelines add provisions for each agency to consult with the other if a charge raised allegations not directly addressed by the Guidelines and the agency believes referral may be appropriate. The new provision should further promote the elimination of duplication in the agencies' enforcement efforts.

**Paul M. Igasaki,**

*Chairman, Equal Employment Opportunity Commission.*

**John D. Trasviña,**

*Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.*

**Memorandum of Understanding Between The Equal Employment Opportunity Commission and The Office of Special Counsel for Immigration Related Unfair Employment Practices**

The Equal Employment Opportunity Commission (''EEOC''), under Title VII of the Civil Rights Act of 1964, as amended (''Title VII''), has jurisdiction to process charges alleging individual act, pattern or practice,or class employment discrimination on the basis of national origin and retaliation. The Department of Justice, Civil Rights Division, Office of the Special Counsel for Immigration Related Unfair Employment Practices (''Special Counsel''), under section 274B of the Immigration and Nationality Act, has jurisdiction to process charges alleging an individual act or a pattern or practice of employment discrimination on the bases of national origin, citizenship status, unfair document practices, and intimidation or retaliation. The purpose of this Memorandum of Understanding between the EEOC and the Special Counsel is to prevent any overlap in the filing of charges of discrimination under these statutes and to promote efficiency in their administration and enforcement. This Memorandum of Understanding is intended to apply to Title VII and Section 274B of the Immigration and Nationality Act as currently written, as well as to any future amendments of these acts.

The parties to this Memorandum agree as follows:

*I. Exchange of Information*

The EEOC and the Special Counsel shall make available for inspection and copying to officials from the agency any information in their records pertaining to a charge or complaint being processed by the requesting agency. Such request shall be made by the Chairman of the EEOC or his or her designee, or the Special Counsel or his or her designee.

*II. Confidentiality*

When the Special Counsel receives information obtained by the EEOC which is subject to the confidentiality requirements of sections 706(b) and 709(e) of Title VII, the Special Counsel shall observe those requirements as would the EEOC, except in cases where the Special Counsel receives the same information from a source independent of the EEOC.

*III. Referral of Charges*

When, during the processing of a charge by either agency, it becomes apparent to the agency processing the charge that the charge or any aspect of the charge falls outside its jurisdiction, but may be within the jurisdiction of the other agency, the agency processing the charge will immediately dismiss as much of the charge as may fall within the jurisdiction of the other agency and, if the charging party has not declined referral, refer the dismissed aspects of the charge to the other agency, and notify the charging party and the respondent of the referral. In determining whether to refer such a charge or such aspect of a charge to the other agency, the agency processing the charge shall be guided by the attached Guidelines.

*IV. Appointment of Respective Agents*

By this Memorandum of Understanding, the agencies hereby appoint each other to act as their respective agents for the sole purpose of allowing charging parties to file charges to satisfy the statutory time limits. To ensure that filing deadlines are satisfied, each agency will accurately record the date of receipt of charges and notify the other agency of the date of receipt when referring a charge.

This Memorandum of Understanding supersedes the 1989 agreement.

Dated: December 18, 1997.

Approved and Accepted for the Equal Employment Opportunity Commission.

*Gilbert F. Casellas*

Chairman, Equal Employment Opportunity Commission.

Dated: December 18, 1997.

Approved and Accepted for the Office of Special Counsel for Immigration Related Unfair Employment Practices.

*John D. Trasviña*

Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

**Guidelines for EEOC Staff**

*I. National Origin Charges*

Charges or aspects of charges alleging an individual act or a pattern or practice of discrimination on the basis of national origin should be referred to the Special Counsel when all of the following conditions are met:

(1) The charge alleges discrimination against the complainant with respect to his or her hiring, discharge,or recruitment or referral for a fee;

(2) The charge is outside the jurisdiction of the EEOC in that the employer (a) does not have 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year or (b) is an employer that is expressly excluded from coverage under Title VII; and

(3) The employer may have had at least 4 employees, including both full-time and part-time employees, on the date of the alleged discriminatory occurrence as required by the Special Counsel's regulations at 28 CFR Part 44.

*II. Citizenship Status Charges*

A. Referral to the Special Counsel

Charges or aspects of charges alleging an individual act or pattern or practice of discrimination on the basis of citizenship status should be referred to the Special Counsel when all of the following conditions are met:

(1) The charge alleges discrimination against the complainant with respect to his or her hiring, discharge, or recruitment or referral for a fee; and

(2) The employer may have had at least 4 employees, including both full-time and part-time employees, on the date of the alleged discriminatory occurrence as required by the Special Counsel's regulations at 28 CFR Part 44.

B. Special Procedure

(1) A charge or aspect of a charge of citizenship status discrimination that cannot be referred to the Special Counsel should, to the extent possible, be construed as alleging national origin discrimination and processed in accordance with Title VII, if the employer otherwise is covered by Title VII.

(2) A charge or aspect of a charge that alleges that a citizenship requirement or preference has the purpose or effect of discriminating on the basis of national origin and is otherwise within the jurisdiction of the EEOC, should be processed in accordance with Title VII. *See* 29 CFR Part 1606 and *Espinoza* v. *Farah Mfg. Co. Inc.*, 414 U.S. 86 (1973). In addition, if any aspect of this charge satisfies the conditions, described in section II A above, for refusal to the Special Counsel, it should be so referred.

*III. Unfair Document Practices (Document Abuse)*

A. Referral to the Special Counsel

Charges or aspects of charges alleging an individual act or a pattern or practice of document abuse should be referred to the Special Counsel when all of the following conditions are met:

(1) The charge alleges that the employer requested complainant to produce more or different documents than required to complete the Immigration and Naturalization Service Form I–9 (Employment Eligibility Verification form), or that the complainant's documentation was rejected by the employer during the I–9 process, or that the employer requested the complainant to produce a specific document or documents for purposes of completing the I–9 or establishing employment eligibility; and

(2) The employer may have had at least 4 employees, including both full-time and part-time employees, on the date of the alleged document abuse as required by the Special Counsel's regulations at 28 CFR Part 44.

B. Special Procedures

(1) A charge or aspect of a charge of document abuse that cannot be referred to the Special Counsel should be construed to the extent possible as alleging national origin discrimination, if the employer otherwise is covered by Title VII.

(2) A charge or aspect of a charge alleging that document abuse has the purpose or effect of discriminating on the basis of

national origin should, to the extent possible, be processed in accordance with Title VII, if the employer otherwise is covered by Title VII. In addition, if any aspect of this charge satisfies the conditions, described in section III A above, for referral to the Special Counsel, it should be so referred.

*IV. Intimidation or Retaliation*

Charges or aspects of charges alleging an individual act or a pattern or practice of intimidation or retaliation should be referred to the Special Counsel when all of the following conditions are met:

(1) The charge alleges that any person or other entity intimidated, threatened, coerced, or retaliated against any individual for the purpose of interfering with any right or privilege secured under section 274B of the Immigration and Nationality Act, or because the individual intends to file or has filed a charge or complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under section 274B of the INA; and

(2) The person or other entity employs four or more individuals.

*V. Unique Situations*

If a charge or aspect of a charge raises allegations not directly addressed in these guidelines and EEOC staff believes that referral to the Special Counsel may be appropriate, EEOC staff shall contact EEOC's Office of Legal Counsel, who then shall consult with the Office of Special Counsel.

*VI. Procedure for Referral*

A. General Provisions

(1) When the charging party has not declined referral, any charge or aspect of a charge alleging discrimination on the basis of national origin, citizenship status, retaliation, or document abuse that satisfies all of the conditions for referral to the Special Counsel should be forwarded by EEOC staff, with the appropriate file, to the Office of Special Counsel for Immigration Related Unfair Employment Practices, P.O. Box 27728, Washington, DC 20038–7728.

(2) When forwarding a charge or aspect of a charge to the Special Counsel, EEOC staff should follow any instructions issued by the Commission regarding this procedure, including instructions relevant to informing the charging party of the possibility of referral and providing notice of the referral to the parties.

B. Additional Procedures Where the Commission Retains Jurisdiction

(1) Where the Commission retains jurisdiction over any aspect of a charge when another aspect of the charge is being referred to the Special Counsel in accordance with these Guidelines, the EEOC field office, when making the referral, will inform the Special Counsel of the retained jurisdiction. This notice to the Special Counsel will specify the allegation(s) over which the Commission retains jurisdiction. The notice will also state that the processing EEOC field office will consult with the Special Counsel to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

(2) After confirming that the Special Counsel has received the referred aspect of the charge, the EEOC field office should attempt consultations with the Special Counsel to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

C. Special Procedures Regarding 706 Agencies

Where preferable and not contrary to an existing work sharing agreement, EEOC staff may choose not to defer to a 706 Agency any charge or portion of a charge, if the charge or any aspect of the charge satisfies all of the conditions for referral to the Special Counsel. Charges or portions of charges not deferred pursuant to this provision should be processed according to the procedures described in these Guidelines.

*VII. Procedures Regarding Referrals from the Special Counsel*

Upon receipt of a charge or aspect of a charge referred from the Special Counsel, the processing EEOC field office should confirm that the charge or aspect of a charge is within the jurisdiction of the Commission. The field office should then notify the Special Counsel of its receipt of the charge or aspect of a charge.

If the Special Counsel has retained jurisdiction over any aspect of a charge when another aspect of the charge has been referred to the EEOC, the field office should attempt to coordinate with the Special Counsel, to the extent possible, the investigative activities of both agencies. If the Special Counsel has not retained jurisdiction over any aspect of a charge that has been referred to the EEOC, the field office should process the referred charge as it would any other charge of discrimination.

**Guidelines for Attorneys in the Office of Special Counsel**

*I. National Origin Charges*

Charges or aspects of charges alleging individual act, pattern or practice, or class discrimination on the basis of national origin should be referred to the EEOC when all of the following conditions are met:

(1) Any aspect of the charge that alleges national origin discrimination is outside the jurisdiction of the Office of Special Counsel or fails to state a claim under 8 U.S.C. 1324b; and

(2) The charge alleges discrimination against the charging party with respect to his or her hiring, discharge, compensation, terms, conditions, or privileges of employment.

*II. Citizenship Status and Document Abuse Charges*

Charges or aspects of charges alleging individual act, pattern or practice, or class discrimination on the basis of citizenship status or document abuse should be referred to the EEOC when all of the following conditions are met:

(1) Any aspect of the charge that alleges national origin discrimination is outside the jurisdiction of the Office of Special Counsel or fails to state a claim under 8 U.S.C. § 1324b;

(2) The charge alleges discrimination against the charging party with respect to his or her hiring, discharge, compensation, terms, conditions, or privileges of employment; and

(3) The alleged discriminatory practice may have had the purpose or effect of discriminating on the basis of national origin.

*III. Retaliation*

Charges or aspects of charges alleging retaliation on an individual, pattern or practice, or class basis should be referred to EEOC when the charge alleges retaliation because an individual has opposed an employment practice that he or she believed to be unlawful under Title VII, or because an individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII.

*IV. Unique Situations*

If a charge or aspects of a charge raises allegations not directly addressed in these guidelines, and the Office of Special Counsel staff believes that referral to the EEOC may be appropriate, Office of Special Counsel staff shall consult with the Special Counsel, who will designate an Office of Special Counsel attorney to consult with the EEOC's Office of Legal Counsel.

*V. Procedure for Referral*

A. General Provisions

When the charging party has not declined referral, any charge or aspect of a charge alleging individual act, pattern or practice, or class discrimination on the basis of national origin, citizenship status, retaliation, or document abuse that satisfies all of the conditions for referral to the EEOC should be forwarded to the appropriate EEOC field office.

B. Additional Procedures Where the Office of Special Counsel Retains Jurisdiction

(1) Where the Office of Special Counsel retains jurisdiction over any aspect of a charge when another aspect of the charge is being referred to the EEOC in accordance with these Guidelines, the attorney making the referral will inform the EEOC of the retained jurisdiction. This notice to the EEOC will specify the claim(s) over which the Office of Special Counsel retains jurisdiction. The notice will also state that the processing attorney will consult with the EEOC to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

(2) After confirming that the EEOC has received the referred aspect of the charge, the Office of Special Counsel attorney should attempt consultations with the EEOC to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

*VI. Procedures Regarding Referrals from the EEOC*

Upon receipt of a charge or aspect of a charge referred from the EEOC, the Office of Special Counsel should confirm that the

charge or aspect of a charge is within the jurisdiction of the Office of Special Counsel.

If the EEOC has retained jurisdiction over any aspect of a charge when another aspect of the charge has been referred to the Office of Special Counsel, the attorney handling the charge for the Office of Special Counsel should attempt to coordinate, to the extent possible, the investigative activities of both agencies. If the EEOC has not retained jurisdiction over any aspect of a charge that has been referred to the Office of Special Counsel, the attorney should process the charge as he or she would any other charge of discrimination.

[FR Doc. 98–2593 Filed 2–2–98; 8:45 am]

BILLING CODE 6570–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

January 26, 1998.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) The accuracy of the Commission's burden estimate; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Persons wishing to comment on this information collection should submit comments by April 6, 1998.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–0798.

*Form No.:* FCC 601.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 55,669.

*Estimated Time Per Response:* 2 hours and 5 minutes.

*Total Annual Burden:* 115,959 hours.

*Frequency of Response:* On occasion reporting requirement.

*Needs and Uses:* FCC 601 will be used as the general application for market based licensing and site-by-site licensing in the Wireless Telecommunications Radio Services. The purpose of this revision is to include the Paging and Cellular Radio Services.

Use of FCC Forms 405, 489, 490, 464, and 600 in the Paging and Cellular services will be eliminated. Schedules D, E, F, and J are intended for technical information.

This long form application is a consolidated application form and will be utilized as part of the Universal Licensing System currently under development. The goal of producing a consolidated form is to create a form with a consistent ''look and feel'' that maximizes the collection of data and minimizes narrative responses, free-form attachment, and free-form letter requests. A consolidated application form will allow common fields, questions, and statements to reside in one place and allow the technical data specific to each service to be captured in its own schedule. FCC 601 consists of a Main Form containing administrative information and a series of Schedules used to file technical information. Auction winning respondents are required to submit FCC 601 electronically.

The data collected on this form includes the applicant's Taxpayer Identification Number. Use of Taxpayer Identification Number in the Universal Licensing System will allow pre-filling of data by searching the database and displaying all pertinent data associated to a given TIN, as well as for Debt Collection purposes. It will also improve and lessen the burden of the volume of data the public would have to enter for later filings.

*OMB Control Number:* 3060–0560.

*Title:* Section 76.911, Petition for reconsideration of certification.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 45.

*Estimated Time Per Response:* 2–10 hours.

*Total Annual Burden:* 410 hours, calculated as follows: We estimate that cable operators and other entities will annually initiate no more than 20 petitions for reconsideration of certification. We estimate that the average burden to complete all aspects of each petition process is 10 hours for each petitioning party and responding party. (20 petitions × 2 parties each × 10 hours = 400 hours. We also estimate that no more than 5 cable operators may, if evidence establishing effective competition is not otherwise available, need to request from a competitor information regarding the competitor's reach and number of subscribers. The burden associated with supplying this information is estimated to be 2 hours per request. (5 occurrences × 2 hours = 10 hours).

*Cost to Respondent:* $410, calculated as follows: Postage and stationery costs associated with the petitions is estimated to be $10 per respondent. (20 petitions × 2 parties × $10 = $400). Postage and stationery costs associated with supplying information regarding the competitor's reach and number of subscribers is estimated to be $2 per request. (5 × $2 = $10).

*Frequency of Response:* On occasion reporting requirement.

*Needs and Uses:* Section 76.911 states that a cable operator, or other interested party, may challenge a franchising authority's certification by filing a petition for reconsideration. The petition may allege either that the cable operator is not subject to rate regulation because effective competition exists, or that the franchising authority does not meet the Commission's certification standards. The burden associated with the petition process was not previously accounted for in this collection; therefore, this collection has been revised. Section 76.911(b)(2) also states that if evidence establishing effective competition is not otherwise available, then cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days and such responses may be limited to numerical totals. Commission staff use the information derived from petitions for reconsideration of certification to resolve disputes concerning the

presence or absence of effective competition in franchise areas and to determine whether there are grounds for denying franchising authority certifications to regulate rates.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–2582 Filed 2–2–98; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 98–66]**

### Minimum Opening Bids or Reserve Prices

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** By this Order, the Wireless Telecommunications Bureau of the FCC (''Bureau'') establishes minimum opening bid requirements for the auction of 986 Local Multipoint Distribution Service (LMDS) licenses set to begin February 18, 1998. The Balanced Budget Act of 1997 creates a presumption that the use of minimum opening bids or reserve prices is in the public interest in FCC auctions unless the Commission determines otherwise. Commenters have failed to persuade the Bureau that the use of minimum opening bids or reserve prices is contrary to the public interest in this instance. Accordingly, the Bureau adopts minimum opening bids, subject to reduction, and establishes a formula for calculating the minimum opening bids.

**EFFECTIVE DATE:** February 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mark Bollinger or Matthew Moses, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of an Order adopted January 14, 1998, and released January 14, 1998. The text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services Inc. (ITS, Inc.) 1231 20th Street, N.W., Washington, D.C. 20036, (2020) 857–3800.

### Synopsis of the Order

*Background*

1. The Balanced Budget Act of 1997 directs the Commission to prescribe methods to establish reasonable reserve prices or minimum opening bids for licenses subject to auction, unless the Commission determines that such reserve prices or minimum opening bids are not in the public interest. On October 17, 1997, the Bureau sought comment by Public Notice regarding the establishment of reserve prices or minimum opening bids, Public Notice, ''Comments Sought on Reserve Prices or Minimum Opening Bids for LMDS Auction,'' DA 97–2224, 62 FR 55642–01 (October 27, 1997).

2. In the October 17 Public Notice, the Bureau proposed to establish minimum opening bids for the LMDS auction and retain discretion to lower the minimum opening bids. The October 17 Public Notice stated the Bureau's belief that minimum opening bids were more appropriate for LMDS than reserve prices. The Bureau noted that a minimum opening bid can be an effective bidding tool that regulates the pace of the auction and provides flexibility.

3. In the October 17 Public Notice, the Bureau proposed the following formula for calculating minimum opening bids for the LMDS auction:

| Population of license area | A block min. opening bid | B block min. opening bid |
|---|---|---|
| Less than 100,000 | $0.75 × population | 10% of A Block. |
| 100,000–1,000,000 | 1.50 × population .. | 10% of A Block. |
| More than 1,000,000 | 2.25 × population .. | 10% of A Block. |

The Bureau sought comment on this proposal. The Bureau also asked that commenters who believed that the proposed formula would result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, explain why this is so, and comment on the desirability of an alternative approach. Commenters were advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. Alternatively, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest dictates having no minimum opening bid or reserve price.

4. *Comments.* Most commenters favor reducible minimum opening bids over reserve prices. Commenters in favor of minimum opening bids believe they have the ability to greatly speed the auction, ensure the licenses are not dramatically undervalued, deter frivolous bidders, ensure fair recovery for the public, and provide immediate feedback on appropriateness of the floor price set as opposed to a reserve price. Several commenters cite the importance of being able to reduce the amount of the minimum opening bid to guard against the risk of setting the opening bid too high, as spectrum valuation is very difficult.

5. Those commenters who oppose minimum opening bids do so for a variety of reasons. Several allege that minimum opening bids will work against an open market concept. One commenter argues that they will work against broad participation, and another asserts that they are not needed because this auction will be competitive. Some commenters oppose minimum opening bids for certain markets by asserting, for example, that they are not appropriate for Basic Trading Areas (BTAs) with population density under 75 persons per square mile, or that they are not appropriate for anything below the top 100 markets. Commenters also allege that there is a risk that they may be set above fair market value and delay service to the public, and they will hurt small businesses. Finally, many commenters opposing minimum opening bids argue that they cannot be appropriately set because valuation is very difficult due to geography, complexity of service and propagation, and lack of existing systems.

6. Many commenters state, however, that if minimum opening bids are adopted, they should be lower than those proposed. Commenters offer several alternatives, including: setting them equal to the upfront payment; setting them at one-third of the upfront payment; establishing no minimum bid on markets with fewer than 50 persons per square mile; establishing a ceiling for the minimum opening bids at $0.40 per pop; adding a fourth tier and using a lower value; setting a single dollar

amount minimum opening bid for each tier; and finally, if population density is under 25 persons per square mile, set the minimum opening bid at 25 percent of the comparable opening bid of places with higher density population. A commenter also offers a proposal for reducing the minimum opening bid during the course of the auction.

7. Several commenters argue that minimum opening bids or reserve prices in LMDS are not in the public interest because they don't foster competition, will be arbitrary, will require a delay in the auction per the Budget Act, will result in a substantial number of unsold licenses, will harm the ability of small businesses to participate and delay, or eliminate LMDS in rural areas. Another commenter, however, argues that minimum bids are in the public interest because they will ensure that only serious parties participate, deter speculators, and have the potential to speed the auction by eliminating ''low ball'' speculation.

**Discussion**

8. The Bureau adopts minimum opening bids for the LMDS auction that are reducible at its discretion. The levels will be set as follows:

| Population of the license area | A block min. opening bid | B block min. opening bid |
|---|---|---|
| Less than 100,000 | $0.50 × population | 10% of A Block. |
| 100,000–1,000,000 | 1.00 × population .. | 10% of A Block. |
| More than 1,000,000 | 2.25 × population .. | 10% of A Block. |

9. As was the case in prescribing minimum opening bids in the auction of the upper channels in the 800 MHz SMR service, Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. The Bureau is not persuaded by commenters' assertions that minimum opening bids for LMDS do not fulfill the public interest objectives set forth in section 309(j) of the Communications Act of 1934, as amended. The Bureau rejects commenters' arguments that the use of minimum opening bids works against an open market concept. The use of competitive bidding implements the principle that the marketplace should determine the value of this spectrum. The use of a minimum opening bid does not undermine that principle. As commenters have suggested, minimum opening bids can help speed the auction process and ensure that licenses are not dramatically undervalued. Further, these goals are fully consistent with the public interest goals set forth in the Communications Act. The Commission agrees with commenters that setting the level of the minimum opening bids is a very difficult task, especially in the case of LMDS where geography and climate may have a significant effect on propagation. To address this concern, the minimum opening bids adopted here are reducible. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. The Bureau emphasizes, however, that such discretion will be exercised sparingly and early in the auction, i.e., before bidders lose all waivers and begin to lose eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid.

10. The Bureau concludes that the revised formula presented here best meets the objectives of the Commission's auction authority in establishing a reasonable minimum opening bid. The Bureau has noted in the past that the reserve price and minimum opening bid provision is not a requirement to maximize auction revenue, but rather a protection against assigning licenses at unacceptably low prices and in noncompetitive markets, and that the Bureau must balance the revenue raising objective against its other public interest objectives in setting the minimum bid level. In doing so, the Bureau has recognized the special characteristics of LMDS services, especially in small and less dense markets and, accordingly, has reduced the minimum opening bid from what was proposed for the lower two tiers. Minimum opening bids for the two lower tiers that are less than those proposed will, the Bureau believes, assist small businesses and facilitate service for rural and other sparsely populated areas. The revised minimum opening bid levels for licenses in the two tiers with populations below 1,000,000 will balance the objective of providing a fair return for the public while still encouraging broad participation and avoiding a delay of service to smaller markets.

11. Effective Date: As noted in this Order, the minimum opening bids adopted herein effectuate the recently-enacted Balanced Budget Act of 1997. In addition, the LMDS auction is scheduled to begin very shortly, on February 18, 1998. The Bureau therefore finds, for good cause, that the minimum opening bids adopted herein should be made effective upon publication in the **Federal Register**.

12. Accordingly, *It is ordered* that, under the authority contained in 47 CFR 0.131(c), 0.331, and 1.2104, and pursuant to the authority of sections 4(i), 303(r), 309(j), and 332(a)(2) of the Communications Act of 1934, as amended, 47 USC 154(i), 303(r), and 332(a), minimum opening bids subject to reduction are established for this auction as specified in this Order.

13. *It is further ordered* that the amount of the minimum opening bid for each auctionable license is set pursuant to the formula adopted in this Order and specified for each license in Table B to this Order.

Federal Communications Commission.

**Daniel Phythyon,**

*Chief, Wireless Telecommunications Bureau.*

BILLING CODE 6712–01–P

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M001 | B007 | Albany-Schenectady, NY | LDB007A/B | 1,028,615 | $2,314,384 | $231,439 |
| M001 | B010 | Allentown-Bethlehem-Easton, PA | LDB010A/B | 686,688 | $686,688 | $68,669 |
| M001 | B043 | Binghamton, NY | LDB043A/B | 356,645 | $356,645 | $35,665 |
| M001 | B063 | Burlington, VT | LDB063A/B | 369,128 | $369,128 | $36,913 |
| M001 | B127 | Elmira-Corning-Hornell, NY | LDB127A/B | 315,038 | $315,038 | $31,504 |
| M001 | B164 | Glens Falls, NY | LDB164A/B | 118,539 | $118,539 | $11,854 |
| M001 | B184 | Hartford, CT | LDB184A/B | 1,123,678 | $2,528,276 | $252,828 |
| M001 | B208 | Ithaca, NY | LDB208A/B | 94,097 | $47,049 | $4,705 |
| M001 | B318 | New Haven-Waterbury-Meriden, CT | LDB318A/B | 978,311 | $978,311 | $97,832 |
| M001 | B319 | New London-Norwich, CT | LDB319A/B | 357,482 | $357,482 | $35,749 |
| M001 | B321 | New York, NY | LDB321A/B | 9,503,769 (note 3) | $21,383,481 | $4,061,389 (note 3) |
| M001 | B333 | Oneonta, NY | LDB333A/B | 107,742 | $107,742 | $10,775 |
| M001 | B352 | Plattsburgh, NY | LDB352A/B | 123,121 | $123,121 | $12,313 |
| M001 | B361 | Poughkeepsie-Kingston, NY | LDB361A/B | 424,766 | $424,766 | $42,477 |
| M001 | B388 | Rutland-Bennington, VT | LDB388A/B | 97,987 | $48,994 | $4,900 |
| M001 | B412 | Scranton-Wilkes Barre-Hazleton, PA | LDB412A/B | 678,410 | $678,410 | $67,841 |
| M001 | B435 | Stroudsburg, PA | LDB435A/B | 95,709 | $47,855 | $4,786 |
| M001 | B438 | Syracuse, NY | LDB438A/B | 791,140 | $791,140 | $79,114 |
| M001 | B453 | Utica-Rome, NY | LDB453A/B | 316,633 | $316,633 | $31,664 |
| M001 | B463 | Watertown, NY | LDB463A/B | 296,253 | $296,253 | $29,626 |
| M002 | B028 | Bakersfield, CA | LDB028A/B | 543,477 | $543,477 | $54,348 |
| M002 | B124 | El Centr8o-Calexico, CA | LDB124A/B | 109,303 | $109,303 | $10,931 |
| M002 | B245 | Las Vegas, NV | LDB245A/B | 857,856 | $857,856 | $85,786 |
| M002 | B262 | Los Angeles, CA | LDB262A/B | 14,549,810 | $32,737,073 | $3,273,708 |
| M002 | B402 | San Diego, CA | LDB402A/B | 2,498,016 | $5,620,536 | $562,054 |
| M002 | B405 | San Luis Obispo, CA | LDB405A/B | 217,162 | $217,162 | $21,717 |
| M002 | B406 | Santa Barbara-Santa Maria, CA | LDB406A/B | 369,608 | $369,608 | $36,961 |
| M003 | B039 | Benton Harbor, MI | LDB039A/B | 161,378 | $161,378 | $16,138 |
| M003 | B046 | Bloomington, IL | LDB046A/B | 215,795 | $215,795 | $21,580 |
| M003 | B071 | Champaign-Urbana, IL | LDB071A/B | 222,312 | $222,312 | $22,232 |
| M003 | B078 | Chicago, IL | LDB078A/B | 8,182,076 | $18,409,671 | $1,840,968 |
| M003 | B103 | Danville, IL | LDB103A/B | 114,241 | $114,241 | $11,425 |
| M003 | B109 | Decatur-Effingham, IL | LDB109A/B | 247,608 | $247,608 | $24,761 |
| M003 | B126 | Elkhart, IN | LDB126A/B | 235,152 | $235,152 | $23,516 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M001 | B007 | Albany-Schenectady, NY | LDB007A/B | 1,028,615 | $2,314,384 | $231,439 |
| M001 | B010 | Allentown-Bethlehem-Easton, PA | LDB010A/B | 686,688 | $686,688 | $68,669 |
| M001 | B043 | Binghamton, NY | LDB043A/B | 356,645 | $356,645 | $35,665 |
| M001 | B063 | Burlington, VT | LDB063A/B | 369,128 | $369,128 | $36,913 |
| M001 | B127 | Elmira-Corning-Hornell, NY | LDB127A/B | 315,038 | $315,038 | $31,504 |
| M001 | B164 | Glens Falls, NY | LDB164A/B | 118,539 | $118,539 | $11,854 |
| M001 | B184 | Hartford, CT | LDB184A/B | 1,123,678 | $2,528,276 | $252,828 |
| M001 | B208 | Ithaca, NY | LDB208A/B | 94,097 | $47,049 | $4,705 |
| M001 | B318 | New Haven-Waterbury-Meriden, CT | LDB318A/B | 978,311 | $978,311 | $97,832 |
| M001 | B319 | New London-Norwich, CT | LDB319A/B | 357,482 | $357,482 | $35,749 |
| M001 | B321 | New York, NY | LDB321A/B | 9,503,769 (note 3) | $21,383,481 | $4,061,389 (note 3) |
| M001 | B333 | Oneonta, NY | LDB333A/B | 107,742 | $107,742 | $10,775 |
| M001 | B352 | Plattsburgh, NY | LDB352A/B | 123,121 | $123,121 | $12,313 |
| M001 | B361 | Poughkeepsie-Kingston, NY | LDB361A/B | 424,766 | $424,766 | $42,477 |
| M001 | B388 | Rutland-Bennington, VT | LDB388A/B | 97,987 | $48,994 | $4,900 |
| M001 | B412 | Scranton-Wilkes Barre-Hazleton, PA | LDB412A/B | 678,410 | $678,410 | $67,841 |
| M001 | B435 | Stroudsburg, PA | LDB435A/B | 95,709 | $47,855 | $4,786 |
| M001 | B438 | Syracuse, NY | LDB438A/B | 791,140 | $791,140 | $79,114 |
| M001 | B453 | Utica-Rome, NY | LDB453A/B | 316,633 | $316,633 | $31,664 |
| M001 | B463 | Watertown, NY | LDB463A/B | 296,253 | $296,253 | $29,626 |
| M002 | B028 | Bakersfield, CA | LDB028A/B | 543,477 | $543,477 | $54,348 |
| M002 | B124 | El Centr8o-Calexico, CA | LDB124A/B | 109,303 | $109,303 | $10,931 |
| M002 | B245 | Las Vegas, NV | LDB245A/B | 857,856 | $857,856 | $85,786 |
| M002 | B262 | Los Angeles, CA | LDB262A/B | 14,549,810 | $32,737,073 | $3,273,708 |
| M002 | B402 | San Diego, CA | LDB402A/B | 2,498,016 | $5,620,536 | $562,054 |
| M002 | B405 | San Luis Obispo, CA | LDB405A/B | 217,162 | $217,162 | $21,717 |
| M002 | B406 | Santa Barbara-Santa Maria, CA | LDB406A/B | 369,608 | $369,608 | $36,961 |
| M003 | B039 | Benton Harbor, MI | LDB039A/B | 161,378 | $161,378 | $16,138 |
| M003 | B046 | Bloomington, IL | LDB046A/B | 215,795 | $215,795 | $21,580 |
| M003 | B071 | Champaign-Urbana, IL | LDB071A/B | 222,312 | $222,312 | $22,232 |
| M003 | B078 | Chicago, IL | LDB078A/B | 8,182,076 | $18,409,671 | $1,840,968 |
| M003 | B103 | Danville, IL | LDB103A/B | 114,241 | $114,241 | $11,425 |
| M003 | B109 | Decatur-Effingham, IL | LDB109A/B | 247,608 | $247,608 | $24,761 |
| M003 | B126 | Elkhart, IN | LDB126A/B | 235,152 | $235,152 | $23,516 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M003 | B155 | Ft. Wayne, IN | LDB155A/B | 646,736 | $646,736 | $64,674 |
| M003 | B161 | Galesburg, IL | LDB161A/B | 75,574 | $37,787 | $3,779 |
| M003 | B213 | Jacksonville, IL | LDB213A/B | 70,795 | $35,398 | $3,540 |
| M003 | B225 | Kankakee, IL | LDB225A/B | 127,042 | $127,042 | $12,705 |
| M003 | B243 | La Salle-Peru-Ottawa-Streator, IL | LDB243A/B | 148,331 | $148,331 | $14,834 |
| M003 | B286 | Mattoon, IL | LDB286A/B | 62,314 | $31,157 | $3,116 |
| M003 | B294 | Michigan City-La Porte, IN | LDB294A/B | 107,066 | $107,066 | $10,707 |
| M003 | B344 | Peoria, IL | LDB344A/B | 455,643 | $455,643 | $45,565 |
| M003 | B380 | Rockford, IL | LDB380A/B | 412,120 | $412,120 | $41,212 |
| M003 | B424 | South Bend-Mishawaka, IN | LDB424A/B | 330,821 | $330,821 | $33,083 |
| M003 | B426 | Springfield, IL | LDB426A/B | 254,696 | $254,696 | $25,470 |
| M004 | B079 | Chico-Oroville, CA | LDB079A/B | 206,918 | $206,918 | $20,692 |
| M004 | B134 | Eureka, CA | LDB134A/B | 142,578 | $142,578 | $14,258 |
| M004 | B157 | Fresno, CA | LDB157A/B | 755,580 | $755,580 | $75,558 |
| M004 | B291 | Merced, CA | LDB291A/B | 192,705 | $192,705 | $19,271 |
| M004 | B303 | Modesto, CA | LDB303A/B | 418,978 | $418,978 | $41,898 |
| M004 | B371 | Redding, CA | LDB371A/B | 253,255 | $253,255 | $25,326 |
| M004 | B372 | Reno, NV | LDB372A/B | 439,279 | $439,279 | $43,928 |
| M004 | B389 | Sacramento, CA | LDB389A/B | 1,656,581 | $3,727,308 | $372,731 |
| M004 | B397 | Salinas-Monterey, CA | LDB397A/B | 355,660 | $355,660 | $35,566 |
| M004 | B404 | San Francisco-Oakland-San Jose, CA | LDB404A/B | 6,420,984 | $14,447,214 | $1,444,722 |
| M004 | B434 | Stockton, CA | LDB434A/B | 512,626 | $512,626 | $51,263 |
| M004 | B458 | Visalia-Porterville-Hanford, CA | LDB458A/B | 413,390 | $413,390 | $41,339 |
| M004 | B485 | Yuba City-Marysville, CA | LDB485A/B | 122,643 | $122,643 | $12,265 |
| M005 | B005 | Adrian, MI | LDB005A/B | 91,476 | $45,738 | $4,574 |
| M005 | B011 | Alpena, MI | LDB011A/B | 63,429 | $31,715 | $3,172 |
| M005 | B033 | Battle Creek, MI | LDB033A/B | 227,541 | $227,541 | $22,755 |
| M005 | B112 | Detroit, MI | LDB112A/B | 4,705,164 | $10,586,619 | $1,058,662 |
| M005 | B143 | Findlay-Tiffin, OH | LDB143A/B | 147,523 | $147,523 | $14,753 |
| M005 | B145 | Flint, MI | LDB145A/B | 500,229 | $500,229 | $50,023 |
| M005 | B169 | Grand Rapids, MI | LDB169A/B | 916,060 | $916,060 | $91,606 |
| M005 | B209 | Jackson, MI | LDB209A/B | 193,187 | $193,187 | $19,319 |
| M005 | B223 | Kalamazoo, MI | LDB223A/B | 352,384 | $352,384 | $35,239 |
| M005 | B241 | Lansing, MI | LDB241A/B | 489,698 | $489,698 | $48,970 |
| M005 | B255 | Lima, OH | LDB255A/B | 249,734 | $249,734 | $24,974 |
| M005 | B307 | Mt. Pleasant, MI | LDB307A/B | 118,558 | $118,558 | $11,856 |
| M005 | B310 | Muskegon, MI | LDB310A/B | 206,974 | $206,974 | $20,698 |
| M005 | B345 | Petoskey, MI | LDB345A/B | 85,863 | $42,932 | $4,294 |
| M005 | B390 | Saginaw-Bay City, MI | LDB390A/B | 615,364 | $615,364 | $61,537 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M005 | B409 | Sault Ste. Marie, MI | LDB409A/B | 51,041 | $25,521 | $2,553 |
| M005 | B444 | Toledo, OH | LDB444A/B | 782,184 | $782,184 | $78,219 |
| M005 | B446 | Traverse City, MI | LDB446A/B | 204,600 | $204,600 | $20,460 |
| M006 | B016 | Anderson, SC | LDB016A/B | 305,120 | $305,120 | $30,512 |
| M006 | B020 | Asheville-Hendersonville, NC | LDB020A/B | 510,055 | $510,055 | $51,006 |
| M006 | B062 | Burlington, NC | LDB062A/B | 108,213 | $108,213 | $10,822 |
| M006 | B072 | Charleston, SC | LDB072A/B | 624,369 | $624,369 | $62,437 |
| M006 | B074 | Charlotte-Gastonia, NC | LDB074A/B | 1,671,037 | $3,759,834 | $375,984 |
| M006 | B091 | Columbia, SC | LDB091A/B | 568,754 | $568,754 | $56,876 |
| M006 | B141 | Fayetteville-Lumberton, NC | LDB141A/B | 571,328 | $571,328 | $57,133 |
| M006 | B147 | Florence, SC | LDB147A/B | 239,208 | $239,208 | $23,921 |
| M006 | B165 | Goldsboro-Kinston, NC | LDB165A/B | 217,319 | $217,319 | $21,732 |
| M006 | B174 | Greensboro-Winston-Salem-High Point, NC | LDB174A/B | 1,241,349 | $2,793,036 | $279,304 |
| M006 | B177 | Greenville-Spartanburg, SC | LDB177A/B | 788,212 | $788,212 | $78,822 |
| M006 | B176 | Greenville-Washington, NC | LDB176A/B | 218,937 | $218,937 | $21,894 |
| M006 | B178 | Greenwood, SC | LDB178A/B | 68,435 | $34,218 | $3,422 |
| M006 | B189 | Hickory-Lenoir-Morganton, NC | LDB189A/B | 292,409 | $292,409 | $29,241 |
| M006 | B214 | Jacksonville, NC | LDB214A/B | 149,838 | $149,838 | $14,984 |
| M006 | B312 | Myrtle Beach, SC | LDB312A/B | 144,053 | $144,053 | $14,406 |
| M006 | B316 | New Bern, NC | LDB316A/B | 154,955 | $154,955 | $15,496 |
| M006 | B335 | Orangeburg, SC | LDB335A/B | 114,458 | $114,458 | $11,446 |
| M006 | B368 | Raleigh-Durham, NC | LDB368A/B | 1,089,423 | $2,451,202 | $245,121 |
| M006 | B377 | Roanoke Rapids, NC | LDB377A/B | 76,314 | $38,157 | $3,816 |
| M006 | B382 | Rocky Mount-Wilson, NC | LDB382A/B | 199,296 | $199,296 | $19,930 |
| M006 | B436 | Sumter, SC | LDB436A/B | 149,524 | $149,524 | $14,953 |
| M006 | B478 | Wilmington, NC | LDB478A/B | 249,711 | $249,711 | $24,972 |
| M007 | B003 | Abilene, TX | LDB003A/B | 253,174 | $253,174 | $25,318 |
| M007 | B013 | Amarillo, TX | LDB013A/B | 380,341 | $380,341 | $38,035 |
| M007 | B027 | Austin, TX | LDB027A/B | 899,361 | $899,361 | $89,937 |
| M007 | B040 | Big Spring, TX | LDB040A/B | 34,589 | $17,295 | $2,500 |
| M007 | B057 | Brownwood, TX | LDB057A/B | 57,684 | $28,842 | $2,885 |
| M007 | B087 | Clovis, NM | LDB087A/B | 71,024 | $35,512 | $3,552 |
| M007 | B101 | Dallas-Ft. Worth, TX | LDB101A/B | 4,329,924 | $9,742,329 | $974,233 |
| M007 | B191 | Hobbs, NM | LDB191A/B | 55,765 | $27,883 | $2,789 |
| M007 | B260 | Longview-Marshall, TX | LDB260A/B | 292,659 | $292,659 | $29,266 |
| M007 | B264 | Lubbock, TX | LDB264A/B | 392,901 | $392,901 | $39,291 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M007 | B296 | Midland, TX | LDB296A/B | 111,567 | $111,567 | $11,157 |
| M007 | B304 | Monroe, LA | LDB304A/B | 324,397 | $324,397 | $32,440 |
| M007 | B327 | Odessa, TX | LDB327A/B | 213,420 | $213,420 | $21,342 |
| M007 | B341 | Paris, TX | LDB341A/B | 89,422 | $44,711 | $4,472 |
| M007 | B400 | San Angelo, TX | LDB400A/B | 155,845 | $155,845 | $15,585 |
| M007 | B418 | Sherman-Denison, TX | LDB418A/B | 151,914 | $151,914 | $15,192 |
| M007 | B419 | Shreveport, LA | LDB419A/B | 583,266 | $583,266 | $58,327 |
| M007 | B441 | Temple-Killeen, TX | LDB441A/B | 291,768 | $291,768 | $29,177 |
| M007 | B443 | Texarkana, TX/AR | LDB443A/B | 255,983 | $255,983 | $25,599 |
| M007 | B452 | Tyler, TX | LDB452A/B | 269,762 | $269,762 | $26,977 |
| M007 | B459 | Waco, TX | LDB459A/B | 270,052 | $270,052 | $27,006 |
| M007 | B473 | Wichita Falls, TX | LDB473A/B | 209,339 | $209,339 | $20,934 |
| M008 | B030 | Bangor, ME | LDB030A/B | 316,838 | $316,838 | $31,684 |
| M008 | B051 | Boston, MA | LDB051A/B | 4,133,895 | $9,301,264 | $930,127 |
| M008 | B201 | Hyannis, MA | LDB201A/B | 204,256 | $204,256 | $20,426 |
| M008 | B227 | Keene, NH | LDB227A/B | 111,709 | $111,709 | $11,171 |
| M008 | B249 | Lebanon-Claremont, NH | LDB249A/B | 167,576 | $167,576 | $16,758 |
| M008 | B251 | Lewiston-Auburn, ME | LDB251A/B | 221,697 | $221,697 | $22,170 |
| M008 | B274 | Manchester-Nashua-Concord, NH | LDB274A/B | 540,704 | $540,704 | $54,071 |
| M008 | B351 | Pittsfield, MA | LDB351A/B | 139,352 | $139,352 | $13,936 |
| M008 | B357 | Portland-Brunswick, ME | LDB357A/B | 471,614 | $471,614 | $47,162 |
| M008 | B363 | Presque Isle, ME | LDB363A/B | 86,936 | $43,468 | $4,347 |
| M008 | B364 | Providence-Pawtucket, RI-New Bedford-Fall River, MA | LDB364A/B | 1,509,789 | $3,397,026 | $339,703 |
| M008 | B427 | Springfield-Holyoke, MA | LDB427A/B | 672,970 | $672,970 | $67,297 |
| M008 | B465 | Waterville-Augusta, ME | LDB465A/B | 165,671 | $165,671 | $16,568 |
| M008 | B480 | Worcester-Fitchburg-Leominster, MA | LDB480A/B | 709,705 | $709,705 | $70,971 |
| M009 | B025 | Atlantic City, NJ | LDB025A/B | 319,416 | $319,416 | $31,942 |
| M009 | B116 | Dover, DE | LDB116A/B | 251,257 | $251,257 | $25,126 |
| M009 | B181 | Harrisburg, PA | LDB181A/B | 654,808 | $654,808 | $65,481 |
| M009 | B240 | Lancaster, PA | LDB240A/B | 422,822 | $422,822 | $42,283 |
| M009 | B346 | Philadelphia, PA-Wilmington, DE-Trenton, NJ | LDB346A/B | 5,899,345 | $13,273,527 | $1,327,353 |
| M009 | B360 | Pottsville, PA | LDB360A/B | 152,585 | $152,585 | $15,259 |
| M009 | B370 | Reading, PA | LDB370A/B | 336,523 | $336,523 | $33,653 |
| M009 | B429 | State College, PA | LDB429A/B | 123,786 | $123,786 | $12,379 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M009 | B437 | Sunbury-Shamokin, PA | LDB437A/B | 187,362 | $187,362 | $18,737 |
| M009 | B475 | Williamsport, PA | LDB475A/B | 161,996 | $161,996 | $16,200 |
| M009 | B483 | York-Hanover, PA | LDB483A/B | 417,848 | $417,848 | $41,785 |
| M010 | B029 | Baltimore, MD | LDB029A/B | 2,430,563 | $5,468,767 | $546,877 |
| M010 | B075 | Charlottesville, VA | LDB075A/B | 190,128 | $190,128 | $19,013 |
| M010 | B100 | Cumberland, MD | LDB100A/B | 156,707 | $156,707 | $15,671 |
| M010 | B156 | Fredericksburg, VA | LDB156A/B | 124,654 | $124,654 | $12,466 |
| M010 | B179 | Hagerstown, MD-Chambersburg, PA-Martinsburg, WV | LDB179A/B | 327,693 | $327,693 | $32,770 |
| M010 | B183 | Harrisonburg, VA | LDB183A/B | 128,910 | $128,910 | $12,891 |
| M010 | B398 | Salisbury, MD | LDB398A/B | 163,043 | $163,043 | $16,305 |
| M010 | B461 | Washington, DC | LDB461A/B | 4,118,628 | $9,266,913 | $926,692 |
| M010 | B479 | Winchester, VA | LDB479A/B | 137,549 | $137,549 | $13,755 |
| M011 | B006 | Albany-Tifton, GA | LDB006A/B | 324,899 | $324,899 | $32,490 |
| M011 | B022 | Athens, GA | LDB022A/B | 166,030 | $166,030 | $16,603 |
| M011 | B024 | Atlanta, GA | LDB024A/B | 3,197,171 | $7,193,635 | $719,364 |
| M011 | B026 | Augusta, GA | LDB026A/B | 521,822 | $521,822 | $52,183 |
| M011 | B076 | Chattanooga, TN | LDB076A/B | 510,860 | $510,860 | $51,086 |
| M011 | B085 | Cleveland, TN | LDB085A/B | 87,355 | $43,678 | $4,368 |
| M011 | B092 | Columbus, GA | LDB092A/B | 342,333 | $342,333 | $34,234 |
| M011 | B102 | Dalton, GA | LDB102A/B | 98,609 | $49,305 | $4,931 |
| M011 | B160 | Gainesville, GA | LDB160A/B | 170,365 | $170,365 | $17,037 |
| M011 | B237 | La Grange, GA | LDB237A/B | 64,164 | $32,082 | $3,209 |
| M011 | B271 | Macon-Warner Robins, GA | LDB271A/B | 589,208 | $589,208 | $58,921 |
| M011 | B334 | Opelika-Auburn, AL | LDB334A/B | 124,022 | $124,022 | $12,403 |
| M011 | B384 | Rome, GA | LDB384A/B | 115,066 | $115,066 | $11,507 |
| M011 | B410 | Savannah, GA | LDB410A/B | 630,180 | $630,180 | $63,018 |
| M012 | B001 | Aberdeen, SD | LDB001A/B | 88,891 | $44,446 | $4,445 |
| M012 | B037 | Bemidji, MN | LDB037A/B | 57,632 | $28,816 | $2,882 |
| M012 | B045 | Bismarck, ND | LDB045A/B | 123,682 | $123,682 | $12,369 |
| M012 | B054 | Brainerd, MN | LDB054A/B | 78,465 | $39,233 | $3,924 |
| M012 | B113 | Dickinson, ND | LDB113A/B | 38,001 | $19,001 | $2,500 |
| M012 | B119 | Duluth, MN | LDB119A/B | 400,771 | $400,771 | $40,078 |
| M012 | B123 | Eau Claire, WI | LDB123A/B | 180,559 | $180,559 | $18,056 |
| M012 | B138 | Fargo, ND | LDB138A/B | 298,015 | $298,015 | $29,802 |
| M012 | B142 | Fergus Falls, MN | LDB142A/B | 120,167 | $120,167 | $12,017 |
| M012 | B166 | Grand Forks, ND | LDB166A/B | 213,932 | $213,932 | $21,394 |
| M012 | B199 | Huron, SD | LDB199A/B | 53,189 | $26,595 | $2,660 |
| M012 | B207 | Ironwood, MI | LDB207A/B | 33,059 | $16,530 | $2,500 |
| M012 | B277 | Mankato-Fairmont, MN | LDB277A/B | 245,144 | $245,144 | $24,515 |
| M012 | B298 | Minneapolis-St. Paul, MN | LDB298A/B | 2,840,561 | $6,391,263 | $639,127 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M012 | B299 | Minot, ND | LDB299A/B | 122,687 | $122,687 | $12,269 |
| M012 | B301 | Mitchell, SD | LDB301A/B | 84,095 | $42,048 | $4,205 |
| M012 | B378 | Rochester-Austin-Albert Lea, MN | LDB378A/B | 233,167 | $233,167 | $23,317 |
| M012 | B422 | Sioux Falls, SD | LDB422A/B | 207,716 | $207,716 | $20,772 |
| M012 | B391 | St. Cloud, MN | LDB391A/B | 243,888 | $243,888 | $24,389 |
| M012 | B464 | Watertown, SD | LDB464A/B | 74,555 | $37,278 | $3,728 |
| M012 | B476 | Williston, ND | LDB476A/B | 27,512 | $13,756 | $2,500 |
| M012 | B477 | Willmar-Marshall, MN | LDB477A/B | 123,749 | $123,749 | $12,375 |
| M012 | B481 | Worthington, MN | LDB481A/B | 96,602 | $48,301 | $4,831 |
| M013 | B107 | Daytona Beach, FL | LDB107A/B | 399,413 | $399,413 | $39,942 |
| M013 | B239 | Lakeland-Winter Haven, FL | LDB239A/B | 405,382 | $405,382 | $40,539 |
| M013 | B289 | Melbourne-Titusville, FL | LDB289A/B | 398,978 | $398,978 | $39,898 |
| M013 | B326 | Ocala, FL | LDB326A/B | 194,833 | $194,833 | $19,484 |
| M013 | B336 | Orlando, FL | LDB336A/B | 1,256,429 | $2,826,966 | $282,697 |
| M013 | B408 | Sarasota-Bradenton, FL | LDB408A/B | 513,348 | $513,348 | $51,335 |
| M013 | B440 | Tampa-St. Petersburg-Clearwater, FL | LDB440A/B | 2,249,405 | $5,061,162 | $506,117 |
| M014 | B034 | Beaumont-Port Arthur, TX | LDB034A/B | 432,129 | $432,129 | $43,213 |
| M014 | B059 | Bryan-College Station, TX | LDB059A/B | 150,998 | $150,998 | $15,100 |
| M014 | B196 | Houston, TX | LDB196A/B | 4,054,253 | $9,122,070 | $912,207 |
| M014 | B238 | Lake Charles, LA | LDB238A/B | 259,425 | $259,425 | $25,943 |
| M014 | B265 | Lufkin-Nacogdoches, TX | LDB265A/B | 144,081 | $144,081 | $14,409 |
| M014 | B456 | Victoria, TX | LDB456A/B | 149,963 | $149,963 | $14,997 |
| M015 | B151 | Ft. Myers, FL | LDB151A/B | 479,452 | $479,452 | $47,946 |
| M015 | B152 | Ft. Pierce-Vero Beach-Stuart, FL | LDB152A/B | 341,279 | $341,279 | $34,128 |
| M015 | B293 | Miami-Ft. Lauderdale, FL | LDB293A/B | 3,270,606 | $7,358,864 | $735,887 |
| M015 | B313 | Naples, FL | LDB313A/B | 152,099 | $152,099 | $15,210 |
| M015 | B469 | West Palm Beach-Boca Raton, FL | LDB469A/B | 893,145 | $893,145 | $89,315 |
| M016 | B021 | Ashtabula, OH | LDB021A/B | 99,821 | $49,911 | $4,992 |
| M016 | B065 | Canton-New Philadelphia, OH | LDB065A/B | 513,623 | $513,623 | $51,363 |
| M016 | B084 | Cleveland-Akron, OH | LDB084A/B | 2,894,133 | $6,511,800 | $651,180 |
| M016 | B122 | East Liverpool-Salem, OH | LDB122A/B | 108,276 | $108,276 | $10,828 |
| M016 | B131 | Erie, PA | LDB131A/B | 275,572 | $275,572 | $27,558 |
| M016 | B278 | Mansfield, OH | LDB278A/B | 221,514 | $221,514 | $22,152 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M016 | B287 | Meadville, PA | LDB287A/B | 86,169 | $43,085 | $4,309 |
| M016 | B403 | Sandusky, OH | LDB403A/B | 133,019 | $133,019 | $13,302 |
| M016 | B416 | Sharon, PA | LDB416A/B | 121,003 | $121,003 | $12,101 |
| M016 | B484 | Youngstown-Warren, OH | LDB484A/B | 492,619 | $492,619 | $49,262 |
| M017 | B009 | Alexandria, LA | LDB009A/B | 280,133 | $280,133 | $28,014 |
| M017 | B032 | Baton Rouge, LA | LDB032A/B | 623,657 | $623,657 | $62,366 |
| M017 | B042 | Biloxi-Gulfport-Pascagoula, MS | LDB042A/B | 339,791 | $339,791 | $33,980 |
| M017 | B154 | Ft. Walton Beach, FL | LDB154A/B | 171,536 | $171,536 | $17,154 |
| M017 | B180 | Hammond, LA | LDB180A/B | 95,583 | $47,792 | $4,780 |
| M017 | B186 | Hattiesburg, MS | LDB186A/B | 161,894 | $161,894 | $16,190 |
| M017 | B195 | Houma-Thibodaux, LA | LDB195A/B | 263,681 | $263,681 | $26,369 |
| M017 | B236 | Lafayette-New Iberia, LA | LDB236A/B | 496,579 | $496,579 | $49,658 |
| M017 | B246 | Laurel, MS | LDB246A/B | 79,145 | $39,573 | $3,958 |
| M017 | B269 | McComb-Brookhaven, MS | LDB269A/B | 107,298 | $107,298 | $10,730 |
| M017 | B302 | Mobile, AL | LDB302A/B | 594,397 | $594,397 | $59,440 |
| M017 | B320 | New Orleans, LA | LDB320A/B | 1,367,169 | $3,076,131 | $307,614 |
| M017 | B343 | Pensacola, FL | LDB343A/B | 344,406 | $344,406 | $34,441 |
| M018 | B035 | Beckley, WV | LDB035A/B | 167,112 | $167,112 | $16,712 |
| M018 | B048 | Bluefield, WV | LDB048A/B | 184,020 | $184,020 | $18,402 |
| M018 | B073 | Charleston, WV | LDB073A/B | 481,387 | $481,387 | $48,139 |
| M018 | B081 | Cincinnati, OH | LDB081A/B | 1,990,451 | $4,478,515 | $447,852 |
| M018 | B106 | Dayton-Springfield, OH | LDB106A/B | 1,207,689 | $2,717,301 | $271,731 |
| M018 | B197 | Huntington, WV-Ashland, KY | LDB197A/B | 363,936 | $363,936 | $36,394 |
| M018 | B259 | Logan, WV | LDB259A/B | 43,032 | $21,516 | $2,500 |
| M018 | B359 | Portsmouth, OH | LDB359A/B | 93,356 | $46,678 | $4,668 |
| M018 | B474 | Williamson, WV-Pikeville, KY | LDB474A/B | 185,682 | $185,682 | $18,569 |
| M019 | B066 | Cape Girardeau-Sikeston, MO | LDB066A/B | 181,795 | $181,795 | $18,180 |
| M019 | B067 | Carbondale-Marion, IL | LDB067A/B | 209,497 | $209,497 | $20,950 |
| M019 | B090 | Columbia, MO | LDB090A/B | 190,536 | $190,536 | $19,054 |
| M019 | B217 | Jefferson City, MO | LDB217A/B | 141,404 | $141,404 | $14,141 |
| M019 | B230 | Kirksville, MO | LDB230A/B | 55,563 | $27,782 | $2,779 |
| M019 | B308 | Mt. Vernon-Centralia, IL | LDB308A/B | 119,286 | $119,286 | $11,929 |
| M019 | B355 | Poplar Bluff, MO | LDB355A/B | 148,240 | $148,240 | $14,824 |
| M019 | B367 | Quincy, IL-Hannibal, MO | LDB367A/B | 177,213 | $177,213 | $17,722 |
| M019 | B383 | Rolla, MO | LDB383A/B | 98,233 | $49,117 | $4,912 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M019 | B428 | Springfield, MO | LDB428A/B | 532,880 | $532,880 | $53,288 |
| M019 | B394 | St. Louis, MO | LDB394A/B | 2,742,114 | $6,169,757 | $616,976 |
| M019 | B470 | West Plains, MO | LDB470A/B | 67,165 | $33,583 | $3,359 |
| M020 | B018 | Appleton-Oshkosh, WI | LDB018A/B | 399,261 | $399,261 | $39,927 |
| M020 | B132 | Escanaba, MI | LDB132A/B | 46,082 | $23,041 | $2,500 |
| M020 | B148 | Fond du Lac, WI | LDB148A/B | 90,083 | $45,042 | $4,505 |
| M020 | B173 | Green Bay, WI | LDB173A/B | 310,435 | $310,435 | $31,044 |
| M020 | B194 | Houghton, MI | LDB194A/B | 45,101 | $22,551 | $2,500 |
| M020 | B206 | Iron Mountain, MI | LDB206A/B | 44,596 | $22,298 | $2,500 |
| M020 | B216 | Janesville-Beloit, WI | LDB216A/B | 214,510 | $214,510 | $21,451 |
| M020 | B234 | La Crosse, WI-Winona, MN | LDB234A/B | 295,769 | $295,769 | $29,577 |
| M020 | B272 | Madison, WI | LDB272A/B | 593,145 | $593,145 | $59,315 |
| M020 | B276 | Manitowoc, WI | LDB276A/B | 80,421 | $40,211 | $4,022 |
| M020 | B279 | Marinette, WI-Menominee, MI | LDB279A/B | 65,468 | $32,734 | $3,274 |
| M020 | B282 | Marquette, MI | LDB282A/B | 79,859 | $39,930 | $3,993 |
| M020 | B297 | Milwaukee, WI | LDB297A/B | 1,751,525 | $3,940,932 | $394,094 |
| M020 | B417 | Sheboygan, WI | LDB417A/B | 103,877 | $103,877 | $10,388 |
| M020 | B432 | Stevens Point-Marshfield-Wisconsin Rapids, WI | LDB432A/B | 201,240 | $201,240 | $20,124 |
| M020 | B466 | Wausau-Rhinelander, WI | LDB466A/B | 220,060 | $220,060 | $22,006 |
| M021 | B012 | Altoona, PA | LDB012A/B | 222,625 | $222,625 | $22,263 |
| M021 | B082 | Clarksburg-Elkins, WV | LDB082A/B | 190,498 | $190,498 | $19,050 |
| M021 | B117 | Du Bois-Clearfield, PA | LDB117A/B | 124,180 | $124,180 | $12,418 |
| M021 | B137 | Fairmont, WV | LDB137A/B | 57,249 | $28,625 | $2,863 |
| M021 | B203 | Indiana, PA | LDB203A/B | 89,994 | $44,997 | $4,500 |
| M021 | B218 | Johnstown, PA | LDB218A/B | 241,247 | $241,247 | $24,125 |
| M021 | B306 | Morgantown, WV | LDB306A/B | 104,546 | $104,546 | $10,455 |
| M021 | B317 | New Castle, PA | LDB317A/B | 96,246 | $48,123 | $4,813 |
| M021 | B328 | Oil City-Franklin, PA | LDB328A/B | 105,882 | $105,882 | $10,589 |
| M021 | B350 | Pittsburgh, PA | LDB350A/B | 2,507,839 | $5,642,638 | $564,264 |
| M021 | B431 | Steubenville, OH-Weirton, WV | LDB431A/B | 142,523 | $142,523 | $14,253 |
| M021 | B471 | Wheeling, WV | LDB471A/B | 219,937 | $219,937 | $21,994 |
| M022 | B069 | Casper-Gillette, WY | LDB069A/B | 135,172 | $135,172 | $13,518 |
| M022 | B077 | Cheyenne, WY | LDB077A/B | 103,939 | $103,939 | $10,394 |
| M022 | B089 | Colorado Springs, CO | LDB089A/B | 409,482 | $409,482 | $40,949 |
| M022 | B110 | Denver, CO | LDB110A/B | 2,073,952 | $4,666,392 | $466,640 |
| M022 | B149 | Ft. Collins-Loveland, CO | LDB149A/B | 186,136 | $186,136 | $18,614 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M022 | B168 | Grand Junction, CO | LDB168A/B | 187,062 | $187,062 | $18,707 |
| M022 | B172 | Greeley, CO | LDB172A/B | 131,821 | $131,821 | $13,183 |
| M022 | B366 | Pueblo, CO | LDB366A/B | 266,001 | $266,001 | $26,601 |
| M022 | B369 | Rapid City, SD | LDB369A/B | 181,278 | $181,278 | $18,128 |
| M022 | B375 | Riverton, WY | LDB375A/B | 46,859 | $23,430 | $2,500 |
| M022 | B381 | Rock Springs, WY | LDB381A/B | 56,981 | $28,491 | $2,850 |
| M022 | B411 | Scottsbluff, NE | LDB411A/B | 101,954 | $101,954 | $10,196 |
| M023 | B104 | Danville, VA | LDB104A/B | 165,434 | $165,434 | $16,544 |
| M023 | B266 | Lynchburg, VA | LDB266A/B | 154,497 | $154,497 | $15,450 |
| M023 | B284 | Martinsville, VA | LDB284A/B | 90,577 | $45,289 | $4,529 |
| M023 | B324 | Norfolk-Virginia Beach-Newport News-Hampton, VA | LDB324A/B | 1,635,296 | $3,679,416 | $367,942 |
| M023 | B374 | Richmond-Petersburg, VA | LDB374A/B | 1,090,869 | $2,454,456 | $245,446 |
| M023 | B376 | Roanoke, VA | LDB376A/B | 609,215 | $609,215 | $60,922 |
| M023 | B430 | Staunton-Waynesboro, VA | LDB430A/B | 100,322 | $100,322 | $10,033 |
| M024 | B002 | Aberdeen, WA | LDB002A/B | 83,057 | $41,529 | $4,153 |
| M024 | B036 | Bellingham, WA | LDB036A/B | 127,780 | $127,780 | $12,778 |
| M024 | B055 | Bremerton, WA | LDB055A/B | 189,731 | $189,731 | $18,974 |
| M024 | B331 | Olympia-Centralia, WA | LDB331A/B | 258,937 | $258,937 | $25,894 |
| M024 | B356 | Port Angeles, WA | LDB356A/B | 76,610 | $38,305 | $3,831 |
| M024 | B413 | Seattle-Tacoma, WA | LDB413A/B | 2,708,949 | $6,095,136 | $609,514 |
| M024 | B468 | Wenatchee, WA | LDB468A/B | 166,563 | $166,563 | $16,657 |
| M024 | B482 | Yakima, WA | LDB482A/B | 215,548 | $215,548 | $21,555 |
| M025 | B489 | Mayaguez-Aguadilla-Ponce, PR | LDB489A/B | 1,351,600 | $3,041,100 | $304,110 |
| M025 | B488 | San Juan, PR | LDB488A/B | 2,170,246 | $4,883,054 | $488,306 |
| M025 | B491 | US Virgin Islands | LDB491A/B | 102,000 | $102,000 | $10,200 |
| M026 | B052 | Bowling Green-Glasgow, KY | LDB052A/B | 222,748 | $222,748 | $22,275 |
| M026 | B098 | Corbin, KY | LDB098A/B | 128,186 | $128,186 | $12,819 |
| M026 | B135 | Evansville, IN | LDB135A/B | 504,859 | $504,859 | $50,486 |
| M026 | B252 | Lexington, KY | LDB252A/B | 816,101 | $816,101 | $81,611 |
| M026 | B263 | Louisville, KY | LDB263A/B | 1,352,955 | $3,044,149 | $304,415 |
| M026 | B273 | Madisonville, KY | LDB273A/B | 46,126 | $23,063 | $2,500 |
| M026 | B338 | Owensboro, KY | LDB338A/B | 157,104 | $157,104 | $15,711 |
| M026 | B339 | Paducah-Murray-Mayfield, KY | LDB339A/B | 217,082 | $217,082 | $21,709 |
| M026 | B423 | Somerset, KY | LDB423A/B | 111,487 | $111,487 | $11,149 |
| M027 | B144 | Flagstaff, AZ | LDB144A/B | 96,591 | $48,296 | $4,830 |
| M027 | B322 | Nogales, AZ | LDB322A/B | 29,676 | $14,838 | $2,500 |
| M027 | B347 | Phoenix, AZ | LDB347A/B | 2,404,760 | $5,410,710 | $541,071 |
| M027 | B362 | Prescott, AZ | LDB362A/B | 107,714 | $107,714 | $10,772 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M027 | B420 | Sierra Vista-Douglas, AZ | LDB420A/B | 97,624 | $48,812 | $4,882 |
| M027 | B447 | Tucson, AZ | LDB447A/B | 666,880 | $666,880 | $66,688 |
| M027 | B486 | Yuma, AZ | LDB486A/B | 106,895 | $106,895 | $10,690 |
| M028 | B049 | Blytheville, AR | LDB049A/B | 79,446 | $39,723 | $3,973 |
| M028 | B094 | Columbus-Starkville, MS | LDB094A/B | 166,415 | $166,415 | $16,642 |
| M028 | B120 | Dyersburg-Union City, TN | LDB120A/B | 113,943 | $113,943 | $11,395 |
| M028 | B175 | Greenville-Greenwood, MS | LDB175A/B | 213,943 | $213,943 | $21,395 |
| M028 | B210 | Jackson, MS | LDB210A/B | 615,521 | $615,521 | $61,553 |
| M028 | B211 | Jackson, TN | LDB211A/B | 255,379 | $255,379 | $25,538 |
| M028 | B290 | Memphis, TN | LDB290A/B | 1,396,390 | $3,141,878 | $314,188 |
| M028 | B292 | Meridian, MS | LDB292A/B | 200,024 | $200,024 | $20,003 |
| M028 | B315 | Natchez, MS | LDB315A/B | 73,214 | $36,607 | $3,661 |
| M028 | B449 | Tupelo-Corinth, MS | LDB449A/B | 291,701 | $291,701 | $29,171 |
| M028 | B455 | Vicksburg, MS | LDB455A/B | 59,250 | $29,625 | $2,963 |
| M029 | B017 | Anniston, AL | LDB017A/B | 161,897 | $161,897 | $16,190 |
| M029 | B044 | Birmingham, AL | LDB044A/B | 1,200,336 | $2,700,756 | $270,076 |
| M029 | B108 | Decatur, AL | LDB108A/B | 131,556 | $131,556 | $13,156 |
| M029 | B115 | Dothan-Enterprise, AL | LDB115A/B | 210,225 | $210,225 | $21,023 |
| M029 | B146 | Florence, AL | LDB146A/B | 173,076 | $173,076 | $17,308 |
| M029 | B158 | Gadsden, AL | LDB158A/B | 174,034 | $174,034 | $17,404 |
| M029 | B198 | Huntsville, AL | LDB198A/B | 439,832 | $439,832 | $43,984 |
| M029 | B305 | Montgomery,AL | LDB305A/B | 440,745 | $440,745 | $44,075 |
| M029 | B415 | Selma, AL | LDB415A/B | 74,457 | $37,229 | $3,723 |
| M029 | B450 | Tuscaloosa, AL | LDB450A/B | 237,918 | $237,918 | $23,792 |
| M030 | B038 | Bend, OR | LDB038A/B | 102,745 | $102,745 | $10,275 |
| M030 | B097 | Coos Bay-North Bend, OR | LDB097A/B | 79,600 | $39,800 | $3,980 |
| M030 | B133 | Eugene-Springfield, OR | LDB133A/B | 282,912 | $282,912 | $28,292 |
| M030 | B231 | Klamath Falls, OR | LDB231A/B | 74,566 | $37,283 | $3,729 |
| M030 | B261 | Longview, WA | LDB261A/B | 85,446 | $42,723 | $4,273 |
| M030 | B288 | Medford-Grants Pass, OR | LDB288A/B | 209,038 | $209,038 | $20,904 |
| M030 | B358 | Portland, OR | LDB358A/B | 1,690,930 | $3,804,593 | $380,460 |
| M030 | B385 | Roseburg, OR | LDB385A/B | 94,649 | $47,325 | $4,733 |
| M030 | B395 | Salem-Albany-Corvallis, OR | LDB395A/B | 440,062 | $440,062 | $44,007 |
| M031 | B015 | Anderson, IN | LDB015A/B | 178,808 | $178,808 | $17,881 |
| M031 | B047 | Bloomington-Bedford, IN | LDB047A/B | 217,914 | $217,914 | $21,792 |
| M031 | B093 | Columbus, IN | LDB093A/B | 139,128 | $139,128 | $13,913 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M031 | B204 | Indianapolis, IN | LDB204A/B | 1,321,911 | $2,974,300 | $297,430 |
| M031 | B233 | Kokomo-Logansport, IN | LDB233A/B | 184,899 | $184,899 | $18,490 |
| M031 | B235 | Lafayette, IN | LDB235A/B | 247,523 | $247,523 | $24,753 |
| M031 | B280 | Marion, IN | LDB280A/B | 109,238 | $109,238 | $10,924 |
| M031 | B309 | Muncie, IN | LDB309A/B | 182,386 | $182,386 | $18,239 |
| M031 | B373 | Richmond, IN | LDB373A/B | 104,942 | $104,942 | $10,495 |
| M031 | B442 | Terre Haute, IN | LDB442A/B | 236,968 | $236,968 | $23,697 |
| M031 | B457 | Vincennes-Washington, IN | LDB457A/B | 93,758 | $46,879 | $4,688 |
| M032 | B061 | Burlington, IA | LDB061A/B | 137,543 | $137,543 | $13,755 |
| M032 | B070 | Cedar Rapids, IA | LDB070A/B | 260,686 | $260,686 | $26,069 |
| M032 | B086 | Clinton, IA-Sterling, IL | LDB086A/B | 147,981 | $147,981 | $14,799 |
| M032 | B105 | Davenport, IA-Moline, IL | LDB105A/B | 419,650 | $419,650 | $41,965 |
| M032 | B111 | Des Moines, IA | LDB111A/B | 728,830 | $728,830 | $72,883 |
| M032 | B118 | Dubuque, IA | LDB118A/B | 176,542 | $176,542 | $17,655 |
| M032 | B150 | Ft. Dodge, IA | LDB150A/B | 131,731 | $131,731 | $13,174 |
| M032 | B205 | Iowa City, IA | LDB205A/B | 115,731 | $115,731 | $11,574 |
| M032 | B283 | Marshalltown, IA | LDB283A/B | 55,695 | $27,848 | $2,785 |
| M032 | B285 | Mason City, IA | LDB285A/B | 118,834 | $118,834 | $11,884 |
| M032 | B337 | Ottumwa, IA | LDB337A/B | 122,988 | $122,988 | $12,299 |
| M032 | B421 | Sioux City, IA | LDB421A/B | 328,919 | $328,919 | $32,892 |
| M032 | B462 | Waterloo-Cedar Falls, IA | LDB462A/B | 261,009 | $261,009 | $26,101 |
| M033 | B056 | Brownsville-Harlingen, TX | LDB056A/B | 277,825 | $277,825 | $27,783 |
| M033 | B099 | Corpus Christi, TX | LDB099A/B | 499,988 | $499,988 | $49,999 |
| M033 | B121 | Eagle Pass-Del Rio, TX | LDB121A/B | 100,813 | $100,813 | $10,082 |
| M033 | B242 | Laredo, TX | LDB242A/B | 152,881 | $152,881 | $15,289 |
| M033 | B268 | McAllen, TX | LDB268A/B | 424,063 | $424,063 | $42,407 |
| M033 | B401 | San Antonio, TX | LDB401A/B | 1,530,954 | $3,444,647 | $344,465 |
| M034 | B129 | Emporia, KS | LDB129A/B | 46,157 | $23,079 | $2,500 |
| M034 | B220 | Joplin, MO-Miami, OK | LDB220A/B | 215,095 | $215,095 | $21,510 |
| M034 | B226 | Kansas City, MO | LDB226A/B | 1,839,569 | $4,139,031 | $413,904 |
| M034 | B247 | Lawrence, KS | LDB247A/B | 81,798 | $40,899 | $4,090 |
| M034 | B275 | Manhattan-Junction City, KS | LDB275A/B | 122,878 | $122,878 | $12,288 |
| M034 | B349 | Pittsburg-Parsons, KS | LDB349A/B | 90,934 | $45,467 | $4,547 |
| M034 | B414 | Sedalia, MO | LDB414A/B | 79,705 | $39,853 | $3,986 |
| M034 | B393 | St. Joseph, MO | LDB393A/B | 191,489 | $191,489 | $19,149 |
| M034 | B445 | Topeka, KS | LDB445A/B | 245,679 | $245,679 | $24,568 |
| M035 | B060 | Buffalo-Niagara Falls, NY | LDB060A/B | 1,231,795 | $2,771,539 | $277,154 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M035 | B215 | Jamestown-Dunkirk, NY-Warren, PA | LDB215A/B | 186,945 | $186,945 | $18,695 |
| M035 | B330 | Olean, NY-Bradford, PA | LDB330A/B | 239,343 | $239,343 | $23,935 |
| M035 | B379 | Rochester, NY | LDB379A/B | 1,118,963 | $2,517,667 | $251,767 |
| M036 | B050 | Boise-Nampa, ID | LDB050A/B | 416,503 | $416,503 | $41,651 |
| M036 | B202 | Idaho Falls, ID | LDB202A/B | 190,267 | $190,267 | $19,027 |
| M036 | B258 | Logan, UT | LDB258A/B | 79,415 | $39,708 | $3,971 |
| M036 | B353 | Pocatello, ID | LDB353A/B | 89,651 | $44,826 | $4,483 |
| M036 | B365 | Provo-Orem, UT | LDB365A/B | 269,407 | $269,407 | $26,941 |
| M036 | B399 | Salt Lake City-Ogden, UT | LDB399A/B | 1,308,035 | $2,943,079 | $294,308 |
| M036 | B392 | St. George, UT | LDB392A/B | 83,263 | $41,632 | $4,164 |
| M036 | B451 | Twin Falls, ID | LDB451A/B | 136,831 | $136,831 | $13,684 |
| M037 | B058 | Brunswick, GA | LDB058A/B | 71,130 | $35,565 | $3,557 |
| M037 | B159 | Gainesville, FL | LDB159A/B | 260,538 | $260,538 | $26,054 |
| M037 | B212 | Jacksonville, FL | LDB212A/B | 1,114,847 | $2,508,406 | $250,841 |
| M037 | B340 | Panama City, FL | LDB340A/B | 171,195 | $171,195 | $17,120 |
| M037 | B439 | Tallahassee, FL | LDB439A/B | 418,963 | $418,963 | $41,897 |
| M037 | B454 | Valdosta, GA | LDB454A/B | 139,226 | $139,226 | $13,923 |
| M037 | B467 | Waycross, GA | LDB467A/B | 99,034 | $49,517 | $4,952 |
| M038 | B023 | Athens, OH | LDB023A/B | 123,864 | $123,864 | $12,387 |
| M038 | B080 | Chillicothe, OH | LDB080A/B | 93,579 | $46,790 | $4,679 |
| M038 | B095 | Columbus, OH | LDB095A/B | 1,477,891 | $3,325,255 | $332,526 |
| M038 | B281 | Marion, OH | LDB281A/B | 92,023 | $46,012 | $4,602 |
| M038 | B342 | Parkersburg, WV-Marietta, OH | LDB342A/B | 180,025 | $180,025 | $18,003 |
| M038 | B487 | Zanesville-Cambridge, OH | LDB487A/B | 178,179 | $178,179 | $17,818 |
| M039 | B008 | Albuquerque, NM | LDB008A/B | 688,612 | $688,612 | $68,862 |
| M039 | B068 | Carlsbad, NM | LDB068A/B | 48,605 | $24,303 | $2,500 |
| M039 | B128 | El Paso, TX | LDB128A/B | 649,860 | $649,860 | $64,986 |
| M039 | B139 | Farmington, NM-Durango, CO | LDB139A/B | 162,776 | $162,776 | $16,278 |
| M039 | B162 | Gallup, NM | LDB162A/B | 122,277 | $122,277 | $12,228 |
| M039 | B244 | Las Cruces, NM | LDB244A/B | 197,166 | $197,166 | $19,717 |
| M039 | B386 | Roswell, NM | LDB386A/B | 70,068 | $35,034 | $3,504 |
| M039 | B407 | Santa Fe, NM | LDB407A/B | 174,526 | $174,526 | $17,453 |
| M040 | B125 | El Dorado-Magnolia-Camden, AR | LDB125A/B | 108,810 | $108,810 | $10,881 |
| M040 | B140 | Fayetteville-Springdale-Rogers, AR | LDB140A/B | 222,526 | $222,526 | $22,253 |
| M040 | B153 | Ft. Smith, AR | LDB153A/B | 282,187 | $282,187 | $28,219 |
| M040 | B182 | Harrison, AR | LDB182A/B | 74,459 | $37,230 | $3,723 |
| M040 | B193 | Hot Springs, AR | LDB193A/B | 117,439 | $117,439 | $11,744 |

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M040 | B219 | Jonesboro-Paragould, AR | LDB219A/B | 159,439 | $159,439 | $15,944 |
| M040 | B257 | Little Rock, AR | LDB257A/B | 852,026 | $852,026 | $85,203 |
| M040 | B348 | Pine Bluff, AR | LDB348A/B | 152,918 | $152,918 | $15,292 |
| M040 | B387 | Russellville, AR | LDB387A/B | 81,863 | $40,932 | $4,094 |
| M041 | B004 | Ada, OK | LDB004A/B | 52,677 | $26,339 | $2,634 |
| M041 | B019 | Ardmore, OK | LDB019A/B | 83,979 | $41,990 | $4,199 |
| M041 | B130 | Enid, OK | LDB130A/B | 85,998 | $42,999 | $4,300 |
| M041 | B248 | Lawton-Duncan, OK | LDB248A/B | 177,830 | $177,830 | $17,783 |
| M041 | B267 | McAlester, OK | LDB267A/B | 50,914 | $25,457 | $2,546 |
| M041 | B329 | Oklahoma City, OK | LDB329A/B | 1,305,472 | $2,937,312 | $293,732 |
| M041 | B354 | Ponca City, OK | LDB354A/B | 48,056 | $24,028 | $2,500 |
| M041 | B433 | Stillwater, OK | LDB433A/B | 72,552 | $36,276 | $3,628 |
| M042 | B041 | Billings, MT | LDB041A/B | 290,242 | $290,242 | $29,025 |
| M042 | B053 | Bozeman, MT | LDB053A/B | 65,077 | $32,539 | $3,254 |
| M042 | B064 | Butte, MT | LDB064A/B | 65,252 | $32,626 | $3,263 |
| M042 | B171 | Great Falls, MT | LDB171A/B | 161,038 | $161,038 | $16,104 |
| M042 | B188 | Helena, MT | LDB188A/B | 58,752 | $29,376 | $2,938 |
| M042 | B224 | Kalispell, MT | LDB224A/B | 59,218 | $29,609 | $2,961 |
| M042 | B228 | Kennewick-Pasco-Richland, WA | LDB228A/B | 150,033 | $150,033 | $15,004 |
| M042 | B250 | Lewiston-Moscow, ID | LDB250A/B | 110,028 | $110,028 | $11,003 |
| M042 | B300 | Missoula, MT | LDB300A/B | 139,270 | $139,270 | $13,927 |
| M042 | B425 | Spokane, WA | LDB425A/B | 612,862 | $612,862 | $61,287 |
| M042 | B460 | Walla Walla, WA-Pendleton, OR | LDB460A/B | 151,563 | $151,563 | $15,157 |
| M043 | B083 | Clarksville, TN-Hopkinsville, KY | LDB083A/B | 220,469 | $220,469 | $22,047 |
| M043 | B096 | Cookeville, TN | LDB096A/B | 117,613 | $117,613 | $11,762 |
| M043 | B314 | Nashville, TN | LDB314A/B | 1,429,309 | $3,215,946 | $321,595 |
| M044 | B229 | Kingsport-Johnson City, TN-Bristol, VA/TN | LDB229A/B | 652,639 | $652,639 | $65,264 |
| M044 | B232 | Knoxville, TN | LDB232A/B | 948,055 | $948,055 | $94,806 |
| M044 | B295 | Middlesboro-Harlan, KY | LDB295A/B | 121,217 | $121,217 | $12,122 |
| M045 | B167 | Grand Island-Kearney, NE | LDB167A/B | 141,541 | $141,541 | $14,155 |
| M045 | B185 | Hastings, NE | LDB185A/B | 72,833 | $36,417 | $3,642 |
| M045 | B256 | Lincoln, NE | LDB256A/B | 309,515 | $309,515 | $30,952 |
| M045 | B270 | McCook, NE | LDB270A/B | 36,618 | $18,309 | $2,500 |
| M045 | B323 | Norfolk, NE | LDB323A/B | 112,526 | $112,526 | $11,253 |
| M045 | B325 | North Platte, NE | LDB325A/B | 80,249 | $40,125 | $4,013 |
| M045 | B332 | Omaha, NE | LDB332A/B | 905,991 | $905,991 | $90,600 |
| M046 | B114 | Dodge City, KS | LDB114A/B | 37,454 | $18,727 | $2,500 |
| M046 | B163 | Garden City, KS | LDB163A/B | 65,059 | $32,530 | $3,253 |

Notes:

(1) All population figures are 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census

(2) The minimum opening bid for Block A is calculated in three tiers, for licenses with populations over 1,000,000 it is calculated as Population x $2.25, for licenses with populations between 100,000 and 1,000,000 it is calculated as Population x $1.00, for licenses with populations under 100,000 it is calculated as Population x $0.50. The minimum opening bid for Block B is 10% of the Block A opening bid (except as noted below for New York). All opening bids are rounded up to the nearest dollar. No opening bids will be initially set below $2,500 per license.

(3) The New York A Block opening bid is based on an encumbered population of 9,503,769, (the unencumbered BTA less the pops in the encumbered PMSA) but the B block opening bid is based on an unencumbered population of 18,050,615.

## TABLE B: MINIMUM OPENING BIDS, LMDS

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|
| M046 | B170 | Great Bend, KS | LDB170A/B | 40,779 | $20,390 | $2,500 |
| M046 | B187 | Hays, KS | LDB187A/B | 60,926 | $30,463 | $3,047 |
| M046 | B200 | Hutchinson, KS | LDB200A/B | 125,094 | $125,094 | $12,510 |
| M046 | B253 | Liberal, KS | LDB253A/B | 53,960 | $26,980 | $2,698 |
| M046 | B396 | Salina, KS | LDB396A/B | 143,408 | $143,408 | $14,341 |
| M046 | B472 | Wichita, KS | LDB472A/B | 597,494 | $597,494 | $59,750 |
| M047 | B190 | Hilo, HI | LDB190A/B | 120,317 | $120,317 | $12,032 |
| M047 | B192 | Honolulu, HI | LDB192A/B | 836,231 | $836,231 | $83,624 |
| M047 | B222 | Kahului-Wailuku-Lahaina, HI | LDB222A/B | 100,504 | $100,504 | $10,051 |
| M047 | B254 | Lihue, HI | LDB254A/B | 51,177 | $25,589 | $2,559 |
| M048 | B031 | Bartlesville, OK | LDB031A/B | 48,066 | $24,033 | $2,500 |
| M048 | B088 | Coffeyville, KS | LDB088A/B | 63,504 | $31,752 | $3,176 |
| M048 | B311 | Muskogee, OK | LDB311A/B | 148,267 | $148,267 | $14,827 |
| M048 | B448 | Tulsa, OK | LDB448A/B | 836,559 | $836,559 | $83,656 |
| M049 | B014 | Anchorage, AK | LDB014A/B | 388,943 | $388,943 | $38,895 |
| M049 | B136 | Fairbanks, AK | LDB136A/B | 92,111 | $46,056 | $4,606 |
| M049 | B221 | Juneau-Ketchikan, AK | LDB221A/B | 68,989 | $34,495 | $3,450 |
| M050 | B490 | Guam | LDB490A/B | 133,000 | $133,000 | $13,300 |
| M050 | B493 | Northern Mariana Islands | LDB493A/B | 43,000 | $21,500 | $2,500 |
| M051 | B492 | American Samoa | LDB492A/B | 47,000 | $23,500 | $2,500 |
| | | | Totals: | | $415,379,291 | $43,469,659 |

Notes:

(1) All population figures are 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census

(2) The minimum opening bid for Block A is calculated in three tiers, for licenses with populations over 1,000,000 it is calculated as Population x $2.25, for licenses with populations between 100,000 and 1,000,000 it is calculated as Population x $1.00, for licenses with populations under 100,000 it is calculated as Population x $0.50. The minimum opening bid for Block B is 10% of the Block A opening bid (except as noted below for New York). All opening bids are rounded up to the nearest dollar. No opening bids will be initially set below $2,500 per license.

(3) The New York A Block opening bid is based on an encumbered population of 9,503,769, (the unencumbered BTA less the pops in the encumbered PMSA) but the B block opening bid is based on an unencumbered population of 18,050,615.

Note regarding use of Major Trading Areas and Basic Trading Areas: Based on material Copyrighted 1992 by Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company (through an arrangement with the Personal Communications Industry Association) to all interested parties for use solely in connection with the licensing, building, marketing and operation of personal communications services, certain specialized mobile radio services and local multipoint distribution services.

**TABLE B: MINIMUM OPENING BIDS, LMDS**

| Major Trading | Market Number | Basic Trading Area Name | License No. | Population (note 1) | Opening Bid A Block (note 2) | Opening Bid B Block (note 2) |
|---|---|---|---|---|---|---|

Note regarding use of Major Trading Areas and Basic Trading Areas: Based on material Copyrighted 1992 by Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company (through an arrangement with the Personal Communications Industry Association) to all interested parties for use solely in connection with the licensing, building, marketing and operation of personal communications services, certain specialized mobile radio services and local multipoint distribution services.

[FR Doc. 98–2610 Filed 2–2–98; 8:45 am]
BILLING CODE 6712–01–C

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 92–237; DA 98–172]**

### North American Numbering Council; Meeting

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On January 30, 1998, the Commission released a public notice announcing the February 18, 1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

**FOR FURTHER INFORMATION CONTACT:** Jeannie Grimes, Paralegal Specialist, assisting the NANC at (202) 418–2313 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20054. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** Released: January 30, 1998.

The next meeting of the North American Numbering Council (NANC) will be held on Wednesday, February 18, 1998, from 8:30 a.m until 5:00 p.m., EST at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, DC 20554.

**Proposed Agenda**

The planned agenda for the February 18, 1998, meeting is as follows:

1. Issues, if any, not completed during Conference Call Meeting of February 9, 1998.
2. Number Pooling Management Group (NPMG) Report.
3. Industry Numbering Committee (INC) Report on Number Pooling.
4. North American Numbering Plan Administration (NANPA) Working Group Report. Central Office (CO) Code Administration and NANPA Transition Task Force updates. Discussion of issue of the neutrality of Database Service Management, Inc., (DSMI) and the ''Broader Issues'' associated with Toll Free Administration.
5. Cost Recovery Working Group Report: Review of Billing and Collection Agent Issue.
6. Local Number Portability Administration (LNPA) Working Group Report: Phase I Implementation Update.
7. Wireline/Wireless Integration Task Force Report: Discussion leading to recommendation on Rate Center Disparity Issue.
8. Steering Group Ad Hoc Committee Report on NANC Responsibilities under the Further Notice of Proposed Rulemaking and Order, In the Matter of Administration of the North American Numbering Plan Carrier Identification Codes (CICs), CC Docket 92–237, FCC 97–364. Discussion leading to recommendation to FCC.
9. Other Business.
10. Review of Decisions Reached and Action Items.

Federal Communications Commission.

**Geraldine A. Matise,**

*Chief, Network Services Division, Common Carrier Bureau.*

[FR Doc. 98–2751 Filed 2–2–98; 8:45 am]
BILLING CODE 6712–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and §225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than February 17, 1998.

**A. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

*1. Gregory Lee Peter*, Tyler, Minnesota; to acquire additional voting shares of Citizens State Agency of Tyler, Inc., Tyler, Minnesota, and thereby indirectly acquire Citizens State Bank of Tyler, Tyler, Minnesota.

Board of Governors of the Federal Reserve System, January 28, 1998.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 98–2533 Filed 2–2–98; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 27, 1998.

**A. Federal Reserve Bank of Chicago** (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

*1. F & M Bancorporation, Inc., and F & M Merger Corporation*, both of Kaukauna, Wisconsin; to acquire 100 percent of the voting shares of, and thereby merge with Financial Management Services of Jefferson, Inc., Jefferson, Wisconsin, and thereby indirectly acquire Farmers & Merchants Bank of Jefferson, Jefferson, Wisconsin.

**B. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*2. Central Texas Bankshare Holdings, Inc.*, Columbus, Texas, and Colorado County Investment Holdings, Inc., Wilmington, Delaware; to acquire up to 35 percent of the voting shares of Hill Bancshares Holdings, Inc., Weimar, Texas, and thereby engage in Hill Bank & Trust Company, Weimar, Texas.

Board of Governors of the Federal Reserve System, January 28, 1998.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 98–2534 Filed 2–2–98; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 27, 1998.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

*1. The First Jermyn Corp.*, Jermyn, Pennsylvania; to merge with Upper Valley Bancorp, Inc., Olyphant, Pennsylvania, and thereby indirectly acquire First National Bank of Jermyn, Jermyn, Pennsylvania, and NBO National Bank, Olyphant, Pennsylvania.

**B. Federal Reserve Bank of Chicago** (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

*1. Heartland Financial USA, Inc.*, Dubuque, Iowa; to acquire 100 percent of the voting shares of Community Bank of Albuquerque (in organization), Albuquerque, New Mexico.

**C. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. TransPecos Financial Corp.*, Iraan, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Iraan State Bank, Iraan, Texas.

Board of Governors of the Federal Reserve System, January 29, 1998.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 98–2631 Filed 2–2–98; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1998.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Royal Bank of Canada*, Montreal, Canada; to acquire, through Intergrion Financial Network, LLC, Atlanta, Georgia, warrants of CheckFree Corporation, Norcross, Georgia, and thereby engage in providing data processing and data transmission services, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 29, 1998.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 98–2632 Filed 2–2–98; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:00 a.m., Monday, February 9, 1998.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph R. Coyne, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 30, 1998.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 98–2766 Filed 1–30–98; 3:44 pm]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 1–2–98 AND 1–16–98

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date Terminated |
|---|---|---|
| Pandurangan Thukkaram, Draka Holding N.V. (a Netherlands company), BIW Connector Systems, Inc | 98–0850 | 01/02/98 |
| Borland International, Inc., Visigenic Software, Inc., Visigenci Software, Inc | 98–0958 | 01/02/98 |
| MST Offshore Partners, C.V., PureTec Corporation, PureTec Corporation | 98–1060 | 01/02/98 |
| J.W. Childs Equity Partners, LP, Levmark Capital Fund, LP, Mike Rose Foods Holding Corp | 98–1062 | 01/02/98 |
| MascoTech, Inc., TriMas Corporation, TriMas Corporation | 98–1066 | 01/02/98 |
| Cathedral Healthcare System, Inc., Orange Mountain Healthcare, Inc., Orange Mountain Healthcare, Inc | 98–1067 | 01/02/98 |
| General Motors Corporation, Republic Industries, Inc., Courtesy Auto Group, Inc | 98–1069 | 01/02/98 |
| The Pittston Company, Distribution Services Limited, Distribution Services Limited | 98–1070 | 01/02/98 |
| EMI Group plc, Bryan Turner, Priority Records, LLC | 98–1072 | 01/02/98 |
| Familiengesellschaft J.M. Voith Gbr, Impact Systems, Inc., Impact Systems, Inc | 98–1073 | 01/02/98 |
| W. Galen Weston, The Quaker Oats Company, Arnie's Bagelicious Bagels, Inc | 98–1074 | 01/02/98 |
| John M. Belk, Belk's Department Store of Jacksonville, N.C., Inc., Belk's Department Store of Jacksonville, N.C., Inc | 98–1082 | 01/02/98 |
| John M. Belk, Belk-Simpson Company, Greenville, South Carolina, Belk-Simpson Company, Greenville, South Carolina | 98–1083 | 01/02/98 |
| John M. Belk, Belk of Spartanburg, S.C., Inc., Belk of Spartanburg, S.C. Inc | 98–1084 | 01/02/98 |
| John M. Belk, Belk Department Store of Hickory, N.C., Inc., Belk Department Store of Hickory, N.C., Inc | 98–1085 | 01/02/98 |
| U.S. Xpress Enterprises, Inc., Richard H. Schaefer, Victory Express, Inc | 98–1087 | 01/02/98 |
| Grupo Industrial Durango, S.A. de C.V., Dennis Mehiel, Box USA Group, Inc | 98–1091 | 01/02/98 |
| Invacare Corporation, Suburban Ostomy Supply Co., Inc., Suburban Ostomy Supply Co., Inc | 98–1147 | 01/02/98 |
| Total Renal Care Holdings, Inc., Renal Treatment Centers, Inc., Renal Treatment Centers, Inc | 98–0927 | 01/05/98 |
| OmniSource Corporation, Myer N. Franklin, Jackson Iron & Metal Company, Inc | 98–0932 | 01/05/98 |
| TPG Partners, LP, Virgin Entertainment Group Limited, Virgin Entertainment Group Limited | 98–0957 | 01/05/98 |
| General Electric Company, TransNet Corporation, TransNet Corporation | 98–1029 | 01/05/98 |
| Archer-Daniels-Midland Company, Archer-Daniels-Midland Company, Heartland Rail Corporation | 98–1042 | 01/05/98 |
| U.S. Office Products Company, Eric Rosenbaum, Astrid Offset Corporation | 98–1044 | 01/05/98 |
| Eric Rosenbaum, U.S. Office Products Company, U.S. Office Products Company | 98–1045 | 01/05/98 |
| United States Filter Corporation, William A Bianco, Jr., The Kinetics Group, Inc | 98–1049 | 01/05/98 |
| Summit Ventures IV, L.P., Gary C. Reif, GERS, Inc | 98–1055 | 01/05/98 |
| Legg Mason, Inc., Brandywine Asset Management, Inc., Brandywine Management, Inc | 98–1057 | 01/05/98 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 1–2–98 AND 1–16–98—Continued

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date Terminated |
|---|---|---|
| Group Maintenance America Corp., Mechanical Interiors, Inc., Mechanical Interior Inc | 98–1058 | 01/05/98 |
| WHX Corporation, Handy & Harman, Handy & Harman | 98–1059 | 01/05/98 |
| Illinois Tool Works Inc., Bee Industries, Inc., Bee Assets | 98–1094 | 01/05/98 |
| Chocoladefabriken Lindt & Sprungli AG, Hicks, Muse, Tate & Furst Equity Fund II, LP., Ghirardelli Holdings Corporation | 98–1097 | 01/05/98 |
| Madison Dearborn Capital Partners II, LP., National Wholesale Liquidators Buying Inc., National Wholesale Liquidators Buying, Inc | 98–1098 | 01/05/98 |
| EVI, Inc., Van der Horst Limited (a Singapore company), Van der Horst USA, Inc | 98–1101 | 01/05/98 |
| Samuel J. Heyman, Polaroid Corporation, Polaroid Assets | 98–1102 | 01/05/98 |
| Tel-Save Holdings, Inc., Symetrics Industries, Inc., Symetrics Industries, Inc | 98–1103 | 01/05/98 |
| Sulzer AG, Spine-Tech, Inc., Spine-Tech, Inc | 98–1105 | 01/05/98 |
| RBPI Holding Corporation, CFA Holding Company, CFA Holding Company | 98–1107 | 01/05/98 |
| Doncasters plc (a British company), Triplex Lloyd plc (a British company), Triplex Lloyd plc | 98–1116 | 01/05/98 |
| Dover Corporation, Wiseco Piston Company, Inc., Wiseco Piston Company, Inc | 98–1117 | 01/05/98 |
| Heilig-Myers Company, Levitz Furniture Incorporated, debtor-in-possession, John M. Smyth Company | 98–1138 | 01/05/98 |
| WinStar Communications, Inc., Midcom Communications Inc., Midcom Communications Inc | 98–1152 | 01/05/98 |
| O'Reilly Automotive, Inc., Hi-Lo Automotive, Inc., Hi-Lo Automotive, Inc | 98–1177 | 01/05/98 |
| Schering-Plough Corporation, Sepracor Inc., Sepracor Inc | 98–0984 | 01/06/98 |
| Teleport Communications Group, Inc., Time Warner Inc., Kansas City Fiber Network, L.P | 98–1046 | 01/06/98 |
| Teleport Communications Group, Inc., Tele-Communications, Inc., Kansas City Fiber Network, L.P | 98–1047 | 01/06/98 |
| Shire Pharmaceuticals Group PLC, Elan Corporation plc (an English company), Athena Neurosciences, Inc | 98–1081 | 01/06/98 |
| Flint Ink Corporation, Manders, plc, Manders, plc | 98–1123 | 01/06/98 |
| Aliant Communications Inc., 360 Communications Company, Omaha Cellular General Partnership | 98–1125 | 01/06/98 |
| Columbia DBS Investors, LP, Clay County Rural Telephone Cooperative, Inc., Satellite Television Services, Inc | 98–0772 | 01/0/98 |
| Merck & Co., Inc., Biogen, Inc., Biogen, Inc | 98–0918 | 01/0/98 |
| Otto Fuchs Metallwerke KG, Joseph Marinello, Homecraft Industries, Inc | 98–0966 | 01/0/98 |
| Clear Channel Communications, Hicks Muse Tate & Furst Equity Fund III, LP, Hicks Muse Tate & Furst Equity Fund III, LP | 98–0993 | 01/0/98 |
| Brian L. Roberts, Marcus Cable Company, L.P., Marcus Cable of Delaware and Maryland, L.P | 98–1030 | 01/0/98 |
| Echlin Inc., Ronald B. Hermann, General Automotive Specialty, Co., Inc | 98–1032 | 01/0/98 |
| Morgan Stanley Capital Partners III, LP, Time Warner Inc., Picayune Cablevision, Inc.; TWI Cable Inc.; Cablevision | 98–1054 | 01/0/98 |
| EMI Group plc, Mark Cerami, Priority Records, LLC | 98–1075 | 01/0/98 |
| EVEREN Capital Corporation, Principal Mutual Life Insurance Company, Principal Securities Holding Corporation | 98–1080 | 01/07/98 |
| Hughes Supply, Inc., Kevin E. Smith & Dana L. Smith, CMJ Management, Inc | 98–1104 | 01/07/98 |
| Ocean Spray Cranberries, Inc., Michael S. Egan, Nantucket Allserve, Inc | 98–0975 | 01/08/98 |
| Peugeot S.A., Bertrand Faure S.A., a French company, Bertrand Faure S.A | 98–1259 | 01/09/98 |
| Intergraph Corporation, Eduardo P. Zorrilla, Zydex, Inc | 98–0635 | 01/12/98 |
| Fleet Financial Group, Inc., Advanta Corp., Advanta Corp | 98–1078 | 01/12/98 |
| Miami Computer Supply Corporation, Minnesota Western/Creative Office Products, Inc., Minnesota Western/Creative Office Products, Inc | 98–1088 | 01/12/98 |
| The Washington Post Company, Time Warner Inc., Time Warner Entertainment-Advance/Newhouse Partnership | 98–1109 | 01/12/98 |
| Time Warner, Inc., Cable TV Fund 14–B, Ltd., Cable TV Fund 14–B, Ltd | 98–1110 | 01/12/98 |
| PP&L Resources, Inc., H.T. Lyons, Jr., H.T. Lyons, Inc | 98–1118 | 01/12/98 |
| The SK Equity Fund, LP, Port, Incorporated, Port, Incorporated | 98–1119 | 01/12/98 |
| JP Foodservice, Inc., Michel Besnier, Sorrento Food Service, Inc | 98–1124 | 01/12/98 |
| Hughes Supply, Inc., LSZ Partnership, International Supply Company | 98–1127 | 01/12/98 |
| Solvay S.A., Schering-Plough Corporation, Schering Corporation | 98–1128 | 01/12/98 |
| Republic Industries, Inc., Estate of L.R. Megel, HUB Motor Co | 98–1129 | 01/12/98 |
| American General Corporation, Provident Companies, Inc., Provident Life and Accident Insurance Co | 98–1130 | 01/12/98 |
| Robert F.X. Sillerman, Becker Interests Limited Partnership, Pace Entertainment Corporation | 98–1131 | 01/12/98 |
| Robert F.X. Sillerman, S. Stephen Selig III, Southern Promotions, Inc.; High Cotton, Inc.; Buckhead | 98–1133 | 01/12/98 |
| Chesapeake Energy Corporation, Charles E. Davidson, DLB Oil and Gas, Inc | 98–1134 | 01/12/98 |
| Fresh America Corporation, Jack Cancellieri, Francisco Distributing Company | 98–1135 | 01/12/98 |
| NovaCare, Inc., Ronald N. Shostack, Americare Employers Group, Inc | 98–1136 | 01/12/98 |
| Cedars-Sinai Medical Center, Tenet Healthcare Corporation, Century City Hospital and Midway Hospital | 98–1137 | 01/12/98 |
| Metallgesellschaft AG, Mr. R. Gadomski, HEPP Corporation | 98–1140 | 01/12/98 |
| The SKM Equity Fund II, LP, J. Todd Figi, Figi Graphics, Inc | 98–1143 | 01/12/98 |
| American Stores Company, SUPERVALU Holdings, Inc., SUPERVALU Holdings, Inc | 98–1146 | 01/12/98 |
| Suez-Lyonnaise des Eaux, Canal Industries, Inc., Power Sources, Inc | 98–1150 | 01/12/98 |
| The Seagram Company, Barry Diller, HSN, Inc | 98–1151 | 01/12/98 |
| Greenwich Street Capital Partners, LP, American Industrial Partners Capital Fund, LP, Day International Group, Inc | 98–1153 | 01/12/98 |
| Berwind Group Partners, Tech Services International, Inc., Tech Services International, Inc | 98–1155 | 01/12/98 |
| Atlantic Bank and Trust Co., Thomas W. Fawell, Forrest Holdings, Inc | 98–1156 | 01/12/98 |
| Oracle Strategic Partners, L.P., Samuel Toscano, Jr., Neuman Health Services, Inc | 98–1159 | 01/12/98 |
| CFM Majestic, Inc., Harris Systems, Inc., Harris Systems, Inc | 98–1161 | 01/12/98 |
| Steven B. Dodge, American Radio Systems Corporation, American Tower Systems Corporation | 98–1163 | 01/12/98 |
| Dean Foods Company, The Penn Traffic Company, The Penn Traffic Company | 98–1164 | 01/12/98 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 1–2–98 AND 1–16–98—Continued

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date Terminated |
|---|---|---|
| Richfood Holdings, Inc., FF Holdings Corporation, Farm Fresh, Inc | 98–1167 | 01/12/98 |
| Roy A. Butler, Butler Broadcasting Company, Ltd | 98–1170 | 01/12/98 |
| Waukesha Hospital System, Inc., Memorial Hospital at Oconomowoc, Inc., Memorial Hospital at Oconomowoc, Inc | 98–1171 | 01/12/98 |
| Eaton Corporation, Amherst H. Turner, G.T. Products, Inc | 98–1172 | 01/12/98 |
| Eaton Corporation, Robert D. Gustine, G.T. Products, Inc | 98–1173 | 01/12/98 |
| LT Participations, S.A., IDC Service, Inc., ASI Market Research, Inc | 98–1174 | 01/12/98 |
| Gardner Denver Machinery Inc., D.H. Caroll, Champion Pneumatic Machinery Company | 98–1176 | 01/12/98 |
| Castle Harlan Partners III, LP, Tidewater Inc., Tidewater Compression Service, Inc | 98–1182 | 01/12/98 |
| Applied Power Inc., John L. Trussell II, Performance Manufactured Products, GJD Corporation | 98–1183 | 01/12/98 |
| John Hess, Amerada Hess Corporation, Amerada Hess Corporation | 98–1184 | 01/12/98 |
| American Stores Company, Bob A. and Eileen Griffith, Ultimate Home Care Co. Inc | 98–1185 | 01/12/98 |
| PhyMatrix Corp., James V. Zelch, M.D., Regional Health Services, Inc.; Regional MRI of Chicago | 98–1187 | 01/12/98 |
| Intermedia Communications Inc., Long Distance Savers, Inc., Long Distance Savers, Inc | 98–1188 | 01/12/98 |
| Alan B. Miller, Hospital San Pablo, Inc., Hospital San Pablo, Inc | 98–1189 | 01/12/98 |
| Joseph DiMarco, Waste Management, Inc., Waste Management, Inc | 98–1194 | 01/12/98 |
| CORESTAFF, Inc., Alexis Tatarsky, Taos Mountain, Inc | 98–1196 | 01/12/98 |
| United Rentals, Inc., Jerry L. Reinhart, Access Rentals, Inc | 98–1197 | 01/12/98 |
| AEC Holdings, Inc., Bunzl plc (a U.K. corporation), Webster Plactics, Inc | 98–1200 | 01/12/98 |
| The Toro Company, David Miller, GR Driplines, Inc | 98–1201 | 01/12/98 |
| Group Maintenance America Corp., Arthur M. Hungerford III, Hungerford Mechanical Corporation | 98–1203 | 01/12/98 |
| Gerald M. David, Reynolds Metals Company, Reynolds Metals Company | 98–1206 | 01/12/98 |
| Clarity Telecom Holdings, Inc., Paul H. Pfleger, TIE/communications, Inc | 98–1210 | 01/12/98 |
| Moog Inc., Ernest Schaeffer, Schaeffer Magnetics, Inc; Deering Properties | 98–1214 | 01/12/98 |
| United Auto Group, Inc., Dan Young Chevrolet, Inc., Dan Young Chevrolet, Inc | 98–1223 | 01/12/98 |
| John DiMarco, Waste Management, Inc., Waste Management, Inc | 98–1226 | 01/12/98 |
| Waste Management, Inc., Joseph DiMarco, DiMarco Disposal Service, Inc., J&J Recycling Co., Inc | 98–1227 | 01/12/98 |
| BankBoston Corporation, The Sheridan Group, Inc., The Sheridan Group, Inc | 98–1230 | 01/12/98 |
| Beverly Enterprises, Inc., BankAmerica Corporation, Acquisition Corp | 98–1232 | 01/12/98 |
| Quilvest, Timothy K. Campbell, Klickitat, Inc.; Automotive Caliper Exchange, Inc | 98–1236 | 01/12/98 |
| United Auto Group, Inc., Alan V. Young, Young Management Group and Kissimmee Motors, Inc | 98–1237 | 01/12/98 |
| Blackstone Offshore Capital Partners III L.P., BMP/Graham Holdings Corp., BMP/Graham Holdings Corp | 98–1239 | 01/12/98 |
| J.W. Childs Equity Partners, L.P., Playtex Products, Inc., Playtex Products, Inc | 98–1240 | 01/12/98 |
| Playtex Products, Inc., J.W. Childs Equity Partners, L.P., Personal Care Holdings, Inc | 98–1241 | 01/12/98 |
| BankBoston Corporation, Richard E. Hearn, Capital City Press, Inc | 98–1244 | 01/12/98 |
| Blackstone Capital Partners III Merchant Banking Fund, BMP/Graham Holdings Corp, BMP/Graham Holdings Corp | 98–1245 | 01/12/98 |
| Waste Management, Inc., John DiMarco, DiMarco Disposal Services, Inc., J&J Recycling Ser | 98–1247 | 01/12/98 |
| Patterson Dental Company, Hill Dental Company, Inc., Hill Dental Company, Inc | 98–1248 | 01/12/98 |
| Cintas Corporation, Johnson Group Cleaners, PLC, ApparelMaster USA Services, Inc./ApparelMaster USA, Inc | 98–1249 | 01/12/98 |
| NCS HealthCare, Inc., J.C. Penney Company, Inc., Thrift Drug, Inc., Fay's Incorporated | 98–1250 | 01/12/98 |
| Phoenix International Life Sciences Inc., Kuraya Corporation, IBRD-Rostrum Global, Inc | 98–1256 | 01/12/98 |
| Rexall Sundown, Inc., Christian Family Foundation, Richardson Labs Inc | 98–1258 | 01/12/98 |
| Health Management Associates, Inc., River Oaks Hospital, Inc., River Oaks Hospital, Inc | 98–1016 | 01/13/98 |
| Rodamco NV (a Dutch company), RREEF America LLC, RREEF America LLC | 98–1086 | 01/13/98 |
| Motorola, Inc., Eclipsys Corporation, Eclipsys Corporation | 98–1099 | 01/13/98 |
| Eclipsys Corporation, Motorola Inc., Motorola Inc | 98–1100 | 01/13/98 |
| The Northwestern Mutual Life Insurance Company, Financial Pacific Company, Financial Pacific Company | 98–1122 | 01/13/98 |
| Robert F.X. Sillerman, BG Presents, Inc., BG Presents, Inc | 98–1181 | 01/13/98 |
| First Chicago NBD Corporation, Victoreen Acquisition Corp., Victoreen, Inc | 98–1195 | 01/13/98 |
| Arthur Liu, Heftel Broadcasting Corporation, Heftel Broadcasting Corporation | 98–1204 | 01/13/98 |
| Heftel Broadcasting Corporation, Arthur Liu, Multicultural Radio Broadcasting, Inc | 98–1205 | 01/13/98 |
| Hicks, Muse, Tate & Furst Equity Fund III, L.P., TowerCom, Limited, TowerCom, Limited | 98–1222 | 01/13/98 |
| Outsourcing Solutions, Inc., The Union Corporation, The Union Corporation | 98–1233 | 01/13/98 |
| Tyco International Ltd., Holmes Protection Group, Inc., Holmes Protection Group, Inc | 98–1261 | 01/13/98 |
| Naomi C. Dempsey, Sonoco Products Company, KMI Continental Fibre Drum, Inc.; Sonoco Plastic Drum | 98–1038 | 01/14/98 |
| David J. Shimmon, United States Filter Corporation, United States Filter Corporation | 98–1050 | 01/14/98 |
| John J. Rigas, Doris Holdings, LP, National Cable Acquisition Associates, LP | 98–1079 | 01/14/98 |
| Index Corporation, Gast Manufacturing Corporation, Gast Manufacturing Corporation | 98–1115 | 01/14/98 |
| K–N Energy, Inc., Occidential Petroleum Corporation, MidCon Corp | 98–1142 | 01/14/98 |
| Mr. and Mrs. Lawrence, Mr. Henry Cournoyer, Directional Wireline Services, Inc.; DAMCO Services | 98–1169 | 01/14/98 |
| United Rentals, Inc., Reinhart Leasing, LLC, Reinhart Leasing, LLC | 98–1198 | 01/14/98 |
| The Perkin-Elmer Corporation, PerSeptive Biosystems Inc., PerSeptive Biosystems, Inc | 97–3651 | 01/15/98 |
| Suez-Lyonnaise des Eaux, ChemFirst Inc., Power Sources, Inc | 98–1246 | 01/15/98 |
| Metal Management, Inc., FPX, Inc. FPX, Inc | 98–1225 | 01/16/98 |
| C.F. Gomma S.p.A., Dana Corporation, Dana Corporation | 98–1228 | 01/16/98 |
| Rental Services Corporation, Danny L. Evans, JDW Enterprises, Inc | 98–1243 | 01/16/98 |
| Culp, Inc., Artee Industries, Incorporated, Artee Industries, Incorporated | 98–1251 | 01/16/98 |
| Westwood One, Alan Markowitz, Philadelphia Express Traffic Limited Partnership | 98–1253 | 01/16/98 |
| DQE, Inc., Malcolm D. Bailey, TEC Industries Inc | 98–1255 | 01/16/98 |
| Golder, Thoma, Cressey, Rauner Fund V, LP, Cormier Equipment Corporation, Cormier Equipment Corporation | 98–1260 | 01/16/98 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 1–2–98 AND 1–16–98—Continued

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date Terminated |
|---|---|---|
| Ashland Inc., Masters-Jackson Paving Co., Masters-Jackson Paving Co | 98–1262 | 01/16/98 |
| Churchill ESOP Capital Partners, LP, R. Briggs Wood, Timec Company, Time Southern California, Inc.; James-Ti | 98–1263 | 01/16/98 |
| J. Erik Hvide, Kirby Corporation, Sabine Transportation Company | 98–1265 | 01/16/98 |
| Jordan Industries, Inc., Jerry A. Klett, K&S Sheet Metal Inc | 98–1267 | 01/16/98 |
| Vishay Intertechnology, Inc., Daimler-Benz AG (a German corporation), TEMIC Semiconductor GmbH; Siliconix Incorporated | 98–1272 | 01/16/98 |
| Quad-C Partners IV, LP, Princeton Enterprises, Inc., United Piece Dye Works, Limited Partnership | 98–1274 | 01/16/98 |
| OM Group, Inc., Auric Corporation, Auric Corporation | 98–1296 | 01/16/98 |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 98–2575 Filed 2–2–98; 8:45 am]

**BILLING CODE 6750–01–M**

## FEDERAL TRADE COMMISSION

**[File No. 971–0095]**

## Cablevision Systems Corporation; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before April 6, 1998.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** William Baer or Phillip Broyles, FTC/H–374, Washington, DC 20580. (202) 326–2932 or 326–2805.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 16, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

### I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment from Cablevision Systems Corp. (''CVS'') an Agreement Containing Consent Order (''Agreement'' or ''Proposed Consent Order''). The Proposed Consent Order is designed to remedy likely anticompetitive effects arising from CVS's proposed acquisition of certain cable television systems presently owned and operated by Tele-Communications, Inc. (''TCI'') in two relevant markets. This Agreement has been placed on the public record for sixty (60) days for receipt of comments from interested persons.

### II. Description of the Parties and the Acquisition

CVS is the nation's sixth largest provider of cable television services to approximately 2.9 million subscribers in 16 states. Through its majority ownership of Rainbow Media Holdings, Inc., CVS also owns interests in and manages a number of cable television programming networks. TCI is the nation's largest provider of cable television services, with over a 27% share of all U.S. cable television households. Through its Liberty Media Corp. subsidiary, TCI also owns an interest in a large number of cable programming networks.

On June 6, 1997, CVS and TCI entered an agreement (the ''acquisition'') whereby TCI will contribute to CVS cable television systems in New Jersey and New York serving approximately 820,000 subscribers. TCI will receive CVS voting securities valued at approximately $423 million.

### III. The Complaint

The draft complaint accompanying the Proposed Consent Order alleges that the acquisition would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

According to the draft complaint, the relevant line of commerce (*i.e.,* product market) is the distribution of multi-channel video programming by cable television. The distribution of multi-channel video programming by technologies other than cable television (*e.g.,* Direct Broadcast Satellite (''DBS'') or Multichannel Multipoint Distribution Systems (''MMDS'')) is not included in the relevant product market because they do not have a significant price-constraining effect on the prices charged by cable operators to subscribers. Most cable television subscribers are not likely to switch to another technology (*e.g.,* DBS or MMDS) in response to a small price increase by cable television providers. In addition, cable television operators do not typically change their prices in response to prices charged by other providers of multi-channel video programming.

According to the draft complaint, the relevant sections of the country (*i.e.,* the

geographic markets) in which to analyze the acquisition by CVS of certain TCI cable television systems are the boroughs of Paramus and Hillsdale, New Jersey. As alleged in the draft complaint, these markets are highly concentrated, with only CVS and TCI providing cable television service in Paramus and Hillsdale. The acquisition would significantly increase concentration in Paramus and Hillsdale, with only CVS left to provide cable television service.

According to the draft complaint, entry into the distribution of multi-channel video programming by cable television is unlikely to be timely or effective to prevent anticompetitive effects in the relevant geographic markets.

CVS's acquisition of the TCI cable systems may substantially reduce competition in the relevant geographic markets by eliminating actual competition between CVS and TCI to serve existing neighborhoods, hotels, and apartment complexes, by eliminating actual competition between CVS and TCI to serve new residential homes, neighborhoods, hotels, and apartment complexes, and by eliminating actual and potential competition between CVS and TCI to extend their cable systems throughout the relevant geographic area. Each of these effects increases the likelihood that the price of cable television services will increase, or the quality of that service will decrease in the relevant sections of the country.

## IV. Terms of the Proposed Consent Order

The Proposed Consent Order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the Proposed Consent Order, CVS must divest TCI's cable systems in Paramus and Hillsdale, New Jersey, to a buyer or buyers approved by the Commission. CVS must have a buyer approved by the Commission within six (6) months after the date it signs the Agreement Containing Consent Order. CVS is not required to complete the divestiture within this six-month time period because municipal approvals can take in excess of ninety (90) days. If CVS obtains the Commission's approval and files all necessary applications for other governmental approvals (*e.g.*, municipal approvals for franchise transfers) within this six-month period, the divestiture period is extended by a period of time equal to the number of days such other governmental body takes to approve or disapprove the necessary applications.

If CVS has not obtained the Commission's approval for an acquirer within the mandated six-month divestiture period, the Commission may appoint a trustee to divest TCI's Paramus and Hillsdale cable systems. To insure that the trustee can divest the assets, the Commission is requiring that CVS begin constructing a headend with the necessary technological capabilities to serve the Paramus and Hillsdale cable systems if CVS has not obtained the Commission's approval of an acquirer within the six-month divestiture period.

For a period of ten years from the date that the Proposed Consent Order becomes final, CVS, with certain exceptions set forth in the Proposed Consent Order, may not acquire any stock or related assets of any entity engaged in providing cable television services in Paramus or Hillsdale without giving the Commission prior notice.

## V. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will be come part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Proposed Consent Order.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Order, in order to aid the Commission in its determination of whether it should make final the Proposed Consent Order contained in the Agreement. This analysis is not intended to constitute an official interpretation of the Agreement and Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 98–2573 Filed 2–2–98; 8:45 am]

BILLING CODE 6750–01–M

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## FEDERAL TRADE COMMISSION

**[File No. 981–0086]**

## S.C. Johnson & Son, Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before April 6, 1998.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** William Baer or Steven Bernstein, FTC/H–374, Washington, D.C. 20580. (202) 326–2932 or 326–2423.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 23, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

## Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order from S.C. Johnson & Son, Inc. (''S.C. Johnson''), which is designed to remedy the anticompetitive effects resulting from S.C. Johnson's acquisition of the home care and home food management businesses of DowBrands Inc., DowBrands L.P. and DowBrands Canada Inc. (hereinafter collectively

''DowBrands''). Under the terms of the agreement, S.C. Johnson will be required to divest DowBrands' ''Spray 'n Wash,'' ''Spray 'n Starch'' and ''Glass Plus'' businesses to Reckitt & Colman, Inc. (''Reckitt & Colman''), the U.S. wholly-owned subsidiary of the British company, Reckitt & Colman plc. If the sale of these assets is not made to Reckitt & Colman, S.C. Johnson will be required to divest the Spray 'n Wash, Spray 'n Starch, and Glass Plus businesses, as well as DowBrands' Urbana, Ohio manufacturing plant and DowBrands' ''Yes'' laundry detergent, ''Vivid'' color-safe bleach, and oven cleaner businesses, to a Commission-approved buyer.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the proposed Consent Order and the comments received, and will decide whether it should withdraw from the proposed Consent Order or make final the proposed Order.

On October 27, 1997, S.C. Johnson and DowBrands entered into Asset Purchase Agreements under which S.C. Johnson agreed to acquire the home care and home food management businesses of DowBrands for approximately $1.125 billion. The proposed Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the markets for the research, development, manufacture and sale of soil and stain remover products and glass cleaner products.

Soil and stain removers are products used by consumers in conjunction with laundry detergent to remove specific and isolated stains from clothing. S.C. Johnson, which sells ''SHOUT,'' and DowBrands, which sells ''Spray 'n Wash,'' are the two leading U.S. suppliers of soil and stain removers. S.C. Johnson, which sells ''Windex,'' and DowBrands, which sells ''Glass Plus,'' are also the two leading U.S. suppliers of glass cleaners, which are used by consumers to clean glass, mirrors and other surfaces.

The soil and stain remover and glass cleaner markets are highly concentrated, and the proposed acquisition would substantially increase concentration in each market. In the soil and stain remover market, the acquisition would result in an increase in the Herfindahl-Hirschmann Index (''HHI'') of 5,646 points, which is an increase of 2,730 points over the premerger HHI level. In the glass cleaner market, the post-merger HHI would be 4,920 points, which is an increase of 1,180 points over the premerger HHI level. By eliminating competition between the top two competitors in these highly concentrated markets, the proposed acquisition would allow S.C. Johnson to unilaterally exercise market power in each market, thereby increasing the likelihood that: (1) Soil and stain remover and glass cleaner customers would be forced to pay higher prices; (2) innovation in these markets would decrease; and (3) advertising and promotion in these markets would be reduced.

The relevant geographic market is the United States. It is unlikely that the competition eliminated by the proposed transaction would be replaced by foreign manufacturers of soil and stain removers and glass cleaners. Foreign manufacturers of these products are unable to compete effectively in the U.S. because they lack the necessary brand recognition among U.S. consumers and face substantial transportation costs, which make importing their products into the U.S. uneconomical.

In addition, new entry would not deter or counteract the anticompetitive effects likely to flow from the proposed transaction. A new entrant into either the soil and stain remover or glass cleaner market would need to undertake the difficult, expensive and time-consuming process of developing a competitive product, creating brand recognition among consumers, and establishing a viable distribution network. Because of the difficulty of accomplishing these tasks, new entry into either market could not be accomplished in a timely manner. Moreover, because of the high costs involved, it is not likely that new entry into either market would occur at all, even if prices were to increase substantially after the transaction.

The proposed Consent Order naming S.C. Johnson as respondent effectively remedies the acquisition's anticompetitive effects in the soil and stain remover and glass cleaner markets by requiring S.C. Johnson to divest DowBrands' Spray 'n Wash, Spray 'n Starch, and Glass Plus businesses to a third party. Pursuant to the Consent Agreement, S.C. Johnson is required to divest these businesses to Reckitt & Colman, no later than 10 business days from the date the Commission accepts this Agreement for public comment. In the event S.C. Johnson fails to divest to Reckitt & Colman, the Consent Agreement contains a ''crown jewel'' provision that requires S.C. Johnson to divest DowBrands' Spray 'n Wash, Spray 'n Starch, and Glass Plus businesses, as well as, at the acquirer's option, DowBrands' Urbana, Ohio manufacturing plant and DowBrands' ''Yes'' laundry detergent, ''Vivid'' color-safe bleach, and oven cleaner businesses, within six months from the date S.C. Johnson signed the Consent Agreement. If S.C. Johnson fails to divest the crown jewel assets within this six-month time period, the Commission may appoint a trustee to divest these assets.

In order to provide the acquirer with DowBrands' soil and stain remover and glass cleaner products during a transition period, the Consent Agreement requires S.C. Johnson, at the acquirer's option, to provide to the acquirer a twelve-month supply of these products at cost. The Order also requires S.C. Johnson to provide the Commission a report of compliance with the divestiture provisions of the Order within thirty (30) days following the date the Order becomes final, every thirty (30) days thereafter until S.C. Johnson has completed the required divestiture and every ninety (90) days thereafter until S.C. Johnson has completed its obligations under the supply agreement.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 98–2574 Filed 2–2–98; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0135]**

## Submission for OMB Review; Comment Request Entitled Subcontractor Payments

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0135).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontractor Payments. A request for public comments was published at 62 FR 62760, November 25, 1997. No comments were received.

**DATES:** Comments may be submitted on or before March 5, 1998.

**FOR FURTHER INFORMATION CONTACT:** Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0135, Subcontractor Payments, in all correspondence.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Part 28 of the FAR contains guidance related to obtaining financial protection against damages under Government contracts (e.g., use of bonds, bid guarantees, insurance etc.). Part 52 contains the texts of solicitation provisions and contract clauses. These regulations implement a statutory requirement for information to be provided by Federal contractors relating to payment bonds furnished under construction contracts which are subject to the Miller Act (40 USC 270a–270d). This collection requirement is mandated by Section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190), as amended by Section 2091 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–335). The clause at 52.228–12, Prospective Subcontractor Requests for Bonds, implements Section 806(a)(3) of Public Law 102–190, as amended, which specifies that, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a construction contract for which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly provide a copy of such payment bond to the requestor.

In conjunction with performance bonds, payment bonds are used in Government construction contracts to secure fulfillment of the contractor's obligations under the contract and to assure that the contractor makes all payments, as required by law, to persons furnishing labor or material in performance of the contract. This regulation provides prospective subcontractors and suppliers a copy of the payment bond furnished by the contractor to the Government for the performance of a Federal construction contract subject to the Miller Act. It is expected that prospective subcontractors and suppliers will use this information to determine whether to contract with that particular prime contractor. This information has been and will continue to be available from the Government. The requirement for contractors to provide a copy of the payment bond upon request to any prospective subcontractor or supplier under the Federal construction contract is contained in Section 806(a)(3) of Public Law 102–190, as amended by Sections 2091 and 8105 of Public Law 103–355.

**B. Annual Reporting Burden**

The annual reporting burden is estimated as follows: Respondents, *12,000;* responses per respondent, *5;* total annual responses, *60,000;* preparation hours per response, *.5;* and total response burden hours, *30,000.*

*Obtaining Copies of Proposals:* Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0135, Subcontractor Payments, in all correspondence.

Dated: January 29, 1998.

**Sharon A. Kiser,**

*FAR Secretariat.*

[FR Doc. 98–2623 Filed 2–2–98; 8:45 am]

**BILLING CODE 6820–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Announcement 98018]**

### State and Local Childhood Lead Poisoning Prevention Program and State Childhood Blood Lead Surveillance Program; Notice of Availability of Funds for Fiscal Year 1998

**Introduction**

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1998 for new and competing continuation State and local childhood lead poisoning prevention (CLPP) programs, and State childhood blood lead surveillance (CBLS) programs.

The CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000'', a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (To order a copy of ''Healthy People 2000'', see the Where to Obtain Additional Information section.)

**Authority**

This program is authorized under sections 301(a), 317A and 317B of the Public Health Service Act [42 U.S.C. 241(a), 247b–1, and 247b–3], as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 51b.

**Smoke-Free Workplace**

The CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

**Eligible Applicants**

Eligible applicants for Part A: State and Local CLPP Programs

Eligible applicants are State health departments or other state health agencies or departments deemed most appropriate by the state to direct and coordinate the State's childhood lead poisoning prevention program.

Also eligible are agencies or units of local government that serve jurisdictional populations greater than 500,000. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and all Indian tribes.

Applicants for local CLPP program grants from eligible units of local jurisdictions must either apply directly to CDC or apply as part of a statewide grant application. Local jurisdictions cannot submit applications directly to CDC and also apply as part of a statewide grant application.

**Note:** An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities

shall not be eligible to receive Federal funds constituting an award, grant, loan, or any other form.

**Eligible Applicants for Part B: CBLS Programs**

Eligible applicants are State health departments, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and all Indian tribes, or other State health agencies or departments deemed most appropriate by the state to direct and coordinate the state's CBLS program. Eligible applicants must have a requirement for reporting of blood lead levels (BLLs) by both public and private laboratories or provide assurances that such a requirement will be in place within 12 months of awarding the grant.

**Eligible Applicants for Part C: Additional Funding for Assessment/ Evaluation Studies**

Eligible applicants for supplemental funds are all successful new and competing-continuation applicants for Part A and Part B, and also all non-competing continuation applicants for Part A and Part B.

**Additional Information for All State Applicants**

If a State agency applying for grant funds is other than the official State health department, written concurrence by the State health department must be provided. State applicants may apply for funding from either Part A: CLPP Program or Part B: CBLS Program, but NOT both. State CLPP Program applicants should note that a CBLS component is a required part of a comprehensive State CLPP program and may be funded within the CLPP program grant.

**Availability of Funds**

*Part A: State and Local CLPP Program*

Up to $11,000,000 will be available in FY 1998 to fund up to 15 new and competing continuation grants. CDC anticipates that awards for the first budget year will range from $75,000 to $1,500,000.

Awards for State applicants

To determine the level of funding for which an individual State applicant for Part A is eligible, State applicants should refer to the accompanying table entitled ''State CLPPs Only: Funding Categories Based on Projected Level of Effort Required to Provide Prevention Services to a State Population.''

Awards for eligible counties and cities, territories, tribes and the District of Columbia will range from $250,000–$450,000, with an average award of $350,000.

*Funding for Part B: State CBLS Programs*

Up to $700,000 will be available in FY 1998 to fund up to 8 new and competing-continuation grants to support the development of CBLS programs. CBLS awards are expected to range from $75,000 to $95,000, with the average award being approximately $85,000. Funds must be used to initiate and build capacity for CBLS. Therefore, any applicant that already has in place a CBLS activity must demonstrate how these grant funds will be used to enhance, expand, or improve the current activity in order to remain eligible for funding. CDC funds should be added to CBLS funding from other sources, if such funding exists. Funds for these programs may not be used in place of any existing funding for CBLS.

*Funding for Part C: Additional Funds for Assessment/Evaluation Studies*

Approximately $150,000 in additional/supplemental funds will be available in FY 1998 to fund up to 3 assessment/evaluation studies. Funds will be awarded for assessment/ evaluation studies that address one of the following:

1. Assessment of lead exposure in a jurisdictional population or subpopulation, using an approach to surveillance that differs from the complete statewide CBLS system described in this announcement.
2. Evaluation of the impact of lead screening recommendations on screening for high-risk children.
3. Evaluation of an approach to primary prevention in a high-risk area.

*Additional Information on Funding*

For State applicants for Part A: CLPP funding only: Determine your funding category (Category 1, 2, or 3) according to the table on the next page. The range and average of awards for each funding category as follows:

Category 1: $800,000–$1,500,000, average award $1,000,000
Category 2: $250,000–$800,000, average award $520,000
Category 3: $75,000–$250,000, average award $150,000

STATE CLPPPS ONLY: FUNDING CATEGORIES BASED ON PROJECTED LEVEL OF EFFORT REQUIRED TO PROVIDE PREVENTION SERVICES TO A STATE POPULATION

| | |
|---|---|
| Alabama | 2 |
| Alaska | 3 |
| Arizona | 3 |
| Arkansas | 2 |
| California* | 1 |
| Colorado | 3 |
| Connecticut | 2 |
| Delaware | 3 |
| Florida* | 3 |
| Georgia | 2 |
| Hawaii | 3 |
| Idaho | 3 |
| Illinois | 1 |
| Indiana* | 3 |
| Iowa | 2 |
| Kansas | 2 |
| Kentucky* | 3 |
| Louisiana | 2 |
| Maine | 3 |
| Maryland | 2 |
| Mass. | 2 |
| Michigan* | 2 |
| Minnesota | 2 |
| Mississippi | 2 |
| Missouri | 2 |
| Montana | 3 |
| Nebraska | 2 |
| Nevada | 3 |
| N. Hampshire | 3 |
| New Jersey | 2 |
| New Mexico | 3 |
| New York* | 2 |
| N. Carolina | 2 |
| North Dakota | 3 |
| Ohio | 1 |
| Oklahoma | 2 |
| Oregon | 3 |
| Pennsylvania | 1 |
| Rhode Island | 2 |
| S. Carolina | 2 |
| South Dakota | 2 |
| Tennessee | 2 |
| Texas* | 1 |
| Utah | 3 |
| Vermont | 3 |
| Virginia | 2 |
| Washington | 2 |
| West Virginia | 2 |
| Wisconsin | 2 |
| Wyoming | 3 |

*Projected level of effort adjusted to account for currently funded locales.

Each applicant must use the funding category that is specified for the applicant's State. CDC will not consider any State application that contains a funding request, including both direct and indirect costs, in excess of the funding limit given for the applicant's State. Any such application will be returned as non-responsive to the program announcement. However, an applicant may request an amount that is less than the lower limit of the range given for the applicant's jurisdiction.

*Additional Information on Funding for All Applicants for Part A and Part B*

New awards are expected to begin on or about July 1, 1998, and are made for 12-month budget periods within project periods not to exceed 3 years. Estimates outlined above are subject to change based on the actual availability of funds and the scope and quality of applications received. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. Grant awards cannot supplant existing funding for CLPP or CBLS programs. Grant funds should be used to increase the level of expenditures from State, local, and other funding sources. Awards will be made with the expectation that program activities will continue when grant funds are terminated.

*Additional Information on Funding for All Applicants for Part C.*

Additional/supplemental funds are to begin on or about July 1, 1998, and are made for a 12-month budget period in a project period not to exceed the time period of the main grant.

**Note:**

- Grant funds may not be expended for medical care and treatment or for environmental remediation of source of lead exposure. However, the applicant must provide a plan to ensure that these program activities are carried out.
- Not more than 10 percent (exclusive of Direct Assistance) of any grant may be obligated for administrative costs. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate.

**Use of Funds—Restrictions on Lobbying**

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 HHS Appropriations Act expressly prohibits the use of 1998 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before State legislatures. Section 503 of Public Law 105–78, provides as follows:

(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, or any State legislature, except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

**Background and Definitions**

*Background*

In the last few years, there have been three major changes in the context within which CLPP and CBLS programs function. These are:

- Changing functions of health departments. Many health departments have ceased to be major providers of direct screening and follow-up care services, as Medicaid beneficiaries who formerly received preventive health care in health departments have enrolled in managed-care organizations. A decrease in funding has occurred in many health departments.
- Renewed emphasis on accountability of government agencies. A renewed call for accountability in government agencies requires that health departments document both the need for and the impact of their programs.
- Continuing declines in BLLs of the entire U.S. population, resulting in wide variation among jurisdictions with regard to the magnitude of their childhood lead poisoning problems.

Resource limitations and the demand for public accountability have made it increasingly important for health departments to perform the core functions of public health as outlined in The Future of Public Health (IOM, 1988). These core functions are assessment, policy development, and assurance. Health department personnel must also accomplish their missions through others, by deepening relationships among new and old partners both in and outside of the health department. Also, the widening disparity among jurisdictions with regard to the magnitude of the childhood lead poisoning problem has focused attention on state and local health departments, as opposed to the Federal government, as the appropriate decision-makers for lead screening. Taken together, these changes are having a profound impact on CLPP programs, necessitating a change in programmatic emphasis.

CLPP and CBLS programs are positioned to bring about improved screening and follow-up care for children with elevated BLLs, improved public and professional awareness of the problem of childhood lead poisoning, and improved childhood blood lead surveillance, by performing the three core public health functions related to childhood lead poisoning prevention.

*Definitions*

- *Assessment:* Activities organized by a health department for the purpose of determining the risk for lead exposure among the children in its jurisdiction and the adequacy of programmatic activities to address this risk.
- *Assurance:* Activities organized by a health department for the purpose of (1) monitoring the provision of CLPP services including screening, follow-up care, and public and professional education; and (2) ensuring, as a provider of last resort, the availability of necessary services.
- *Care coordination:* The monitoring and organizing of follow-up care for a child with an elevated blood lead level (BLL). Follow-up care includes both medical and environmental interventions.
- *High-risk:* A term used to designate areas, populations, and individuals with risk for lead exposure that is assessed or demonstrated to be higher than average.
- *Lead hazard:* Accessible paint, dust, soil, water, or other source or pathway that contains lead or lead compounds that can contribute to or cause elevated BLLs.
- *Lead hazard remediation:* The elimination, reduction, or containment of known and accessible lead sources.
- *Policy development:* Activities organized by a health department for the purpose of framing the CLPP problem and establishing the response to it in its jurisdictions; includes development, oversight, and evaluation of necessary programs, relationships, and policies that will support CLPP.
- *Primary prevention:* The prevention of elevated BLLs in an individual or population, usually by reducing or eliminating lead hazards in the environment.

• *Program:* A designated unit within an agency responsible for implementing and coordinating a systematic and comprehensive approach to CLPP and CBLS.

• *Surveillance:* A process which (1) systematically collects information over time about children with elevated BLLs using laboratory reports as the data source; (2) provides for the follow-up of cases, including field investigations when necessary; (3) provides timely and useful analysis and reporting of the accumulated data, including an estimate of the rate of elevated BLLs among all children receiving blood tests; and (4) reports data to CDC in the appropriate format.

**Purpose**

The purpose of this grant program is to bring about: (1) Screening for children who are potentially exposed to lead, and follow-up care for children who are identified with elevated BLLs; (2) awareness and action among the general public and concerned professionals in relation to preventing childhood lead poisoning; and (3) collaboration with other government and community-based organizations for primary prevention of lead poisoning in high-risk areas. To achieve this purpose, grant recipients are expected to improve their capacity to perform core public health functions related to CLPP and, for all state grant recipients, to develop statewide capacity for conducting CBLS.

These awards should assist State and local health departments in balancing core public health functions. In some places, achieving this balance will mean shifting emphasis away from provision of direct screening and follow-up services and toward improvement of coalitions and partnerships; providing better and more sophisticated assessment; and developing and evaluating policies and programs in a manner that is firmly grounded in improved assessment. In other places where this balance already exists, the award should help enhance existing activities.

**Program Requirements**

*Part A: State and Local CLPP Programs*

The following are requirements for CLPP Programs:

1. A director/coordinator with authority and responsibility to carry out the requirements of the program.

2. Provide qualified staff, other resources, and knowledge to implement the provisions of the program. Applicants requesting grant supported positions must provide assurances that such positions will be approved by the applicant's personnel system.

3. For State applicants, commitment to develop a statewide childhood blood lead surveillance (CBLS) system in accordance with CDC guidance and to submit surveillance data annually to CDC. For local applicants, commitment to develop a data management system that is part of a state CBLS, where applicable; otherwise, local applicants must develop an automated data management system to collect and maintain data on the results of blood lead testing and data on follow-up care for children with elevated BLLs. For both State and local applicants, commitment to use these systems to monitor adequacy of screening of high-risk children and of follow-up care for children with elevated BLLs.

4. For State applicants, commitment to development a statewide childhood blood lead screening plan consistent with CDC guidance provided in Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials. For local applicants, commitment to participate in the statewide planning process.

5. Establish effective, well-defined working relationships within public health agencies and with other agencies and organizations at national, State, and community levels (e.g., housing authorities; environmental agencies; maternal and child health programs; State Medicaid Early Periodic Screening, Diagnosis, and Treatment (EPSDT) programs; community and migrant health centers; community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act; State epidemiology programs; State and local housing rehabilitation programs; schools of public health and medical schools; and environmental interest groups).

6. Assurances that income earned by the CLPP program is returned to the program for its use.

7. Program maintains a system to monitor the notification and follow-up of children who are confirmed with elevated BLLs and who are referred to local Public Housing Authorities.

8. For State CLPP Programs provide managerial, technical, analytical, and program evaluation assistance to local agencies in developing or strengthening CLPP programs.

9. SPECIAL REQUIREMENT regarding Medicaid provider-status of applicants: Pursuant to section 317A of the Public Health Service Act (42 U.S.C. 247b–1), as amended by Section 303 of the ''Preventive Health Amendments of 1992'' (Pub. L. 102–531), applicants AND current grantees must meet the following requirements: For CLPP program services which are Medicaid-reimbursable in the applicant's State:

• Applicants who directly provide these services must be enrolled with their State Medicaid agency as Medicaid providers.

• Providers who enter into agreements with the applicant to provide such services must be enrolled with their State Medicaid agency as providers. An exception to this requirement will be made for providers whose services are provided free of charge and who accept no reimbursement from any third-party payer. Such providers who accept voluntary donations may still be exempted from this requirement.

*Part B: CBLS Programs*

The following are requirements for CBLS Programs:

1. A full-time director/coordinator with authority and responsibility to carry out the requirements of surveillance program activities.

2. Provide qualified staff, other resources, and knowledge to implement the provisions of this program. Applicants requesting grant-supported positions must provide assurances that such positions will be approved by the applicant's personnel system.

3. Establish effective, well-defined working relationships with CLPP programs within the applicant's State.

4. Revise, refine, and carrying out, in collaboration with CDC, the proposed methodology for conducting CBLS.

5. Evaluate any interim and/or final evaluation of the CBLS activity in collaboration with CDC.

6. Commitment to development a statewide childhood blood lead screening plan consistent with CDC guidance provided in Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials.

7. Monitoring and evaluation of all major program activities and services.

8. Conduct and evaluate public health programs or having access to professionals who are knowledgeable in conducting such activities.

9. Translate data to State and local public health officials, policy- and decision-makers, and others seeking to strengthen program efforts.

10. Report CBLS data to CDC in the approved OMB format.

*Part C: Assessment/Evaluation Studies*

The following are requirements for Assessment/Evaluation Studies:

1. A study director with specific authority and responsibility to carry out the requirements of the project.

2. Demonstrated ability to collect and analyze data necessary for the conduct of the assessment/evaluation study. (OMB Number 0920–0337)

3. Conduct administrative arrangements required by the study.

4. Staff with demonstrated experience in conducting relevant epidemiologic studies, including publication of original research in peer-reviewed journals.

5. Establish effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed study.

**Technical Reporting Requirements**

Quarterly progress reports (OMB Number 0920–0282) are required of all grantees. The quarterly report should not exceed 25 pages. Time lines for the quarterly reports will be established at the time of award, but are typically due 30 days after the end of each quarter. Note that CBLS-only grantees are not required to submit quarterly quantitative data.

Annual Financial Status Reports (FSRs) are due 90 days after the end of the budget period. The final progress report and FSR shall be prepared and submitted no later than 90 days after the end of the project period. Submit the original and two copies of the reports to the Grants Management Office indicated in ''Where to Obtain Additional Information''.

**Application Contents**

Please refer to the Program Guidance included with the application package for important information about completing your application.

- Applications for CLPP and CBLS Programs must be developed in accordance with PHS Form 5161–1, and should follow the structure presented in the Program Guidance document provided by CDC.
- Applications for additional funds for assessment/evaluation studies must be developed in accordance with PHS Form 398.
- Application pages must be clearly numbered, and a complete index to the application and its appendices must be included.
- The original and two copies of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten, double spaced, printed on one side only, with un-reduced type on 8½″ by 11″ paper, and at least 1″ margins and heading and footers. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.
- The main body of CLPP and CBLS Program applications should not exceed 75 pages. Supplemental information may be placed in appendices and should not exceed 25 pages. Competing continuation applicants should submit a progress report no longer than 10 pages.
- The main body of applications for additional funds for assessment/evaluation studies should not exceed the page limit set in ''Part C'' of the program guidance document.

**Evaluation Criteria**

The review of applications will be conducted by an objective review committee who will review the quality of the application based on the strength and completeness of the plan submitted. The budget justification will be used to assess how well the technical plan is likely to be carried out using available resources. For state CLPP Programs, funding requests must be consistent with each applicant's funding category or adjusted funding category. (See section entitled ''Availability of Funds'' for detailed guidance.) The maximum rating score of an application is 100 points.

*Part A: State and Local CLPP Program—Factors To Be considered*

| Evaluation criterion | Points |
|---|---|
| 1. Problem statement and evidence of need | 15 |
| 2. Surveillance activities<br>State: Development of CBLS<br>Local: Automated data—management and tracking system | 16 |
| 3. Collaboration and statewide planning | 15 |
| 4. Core public health functions | 25 |
| 5. Goals and objectives | 15 |
| 6. Program management and staffing | 14 |
| 7. Budget and justificationnot scored | (1) |
| Total Maximum Points | 100 |

[1] Not scored.

*Part A: State and Local CLPP Programs—Factors To Be Considered*

1. Problem statement and evidence of need (15 Points)

a. The applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in the jurisdiction, using evidence (as available) of incidence and/or prevalence and demographic indicators. (10 points)

b. The applicant's description of and the extent of current prevention activities, including need, available resources, gaps, and use of this award to address gaps. (5 points)

2. Surveillance activities (16 points)

The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which a proposed schedule for accomplishing each activity and methods for evaluating each activity are clearly defined and appropriate.

For State applicants, the following elements will be specifically evaluated:

a. How laboratories are identified and data will be transmitted. (2 points)

b. How data will be collected and managed. (2 points)

c. How quality of data and timeliness and completeness of reporting will be ensured. (2 points)

d. How data will be used by program. (2 points)

e. How summary data will be reported and disseminated. (2 points)

f. How and when data will be analyzed. (2 points)

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level). (2 points)

h. Time line and methods for evaluating CBLS approach. (2 points)

For local applicants, the following elements will be specifically evaluated:

a. How laboratory reports will be received and data transmitted. (2 points)

b. How data will be collected and managed. (2 points)

c. How quality of data and timeliness and completeness of reporting will be assured. (2 points)

d. How data will be analyzed and used by the program. (2 points)

e. How summary data will be reported and disseminated. (2 points)

f. Coordination with state systems. (2 points)

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level). (2 points)

h. Time line and methods for evaluating data-collection approach. (2 points)

3. Collaboration and statewide planning (15 Points)

a. Evidence of collaboration with principal partners, including managed-care organizations, state Medicaid agency, child health-care providers and provider groups, insurers, community-based organizations, housing agencies, and banking, real-estate, and property-owner interests, as demonstrated by letters of support, memoranda of understanding, contracts, or other documented evidence of relationships with important collaborators. (5 points)

b. The approach to developing and carrying out an inclusive State- or jurisdiction-wide screening plan as outlined in Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials. (5 points)

c. Description of how collaborations are expected to result in improved prevention. (5 points)

4. Capacity to carry out public-health core functions (25 Points)

a. The description of the approach and activities necessary to achieve a balance among health department roles in CLPP, including assessment, program and policy development, and monitoring, evaluation, and ensuring provision of all necessary components of comprehensive CLPP. (5 points)

b. The epidemiologic capacity and structure in place or planned to provide on-going analysis of: (1) population-based data and (2) program activities described in the application. (5 points)

c. The health education and health communication capacity in place or planned to reach out to actual and potential collaborators and partners to achieve program goals. (5 points)

d. The capacity in place or planned to fill in the gaps in direct service provision, where gaps have been demonstrated. (5 points)

e. The evaluation capacity in place or planned to examine basic data on CLPP burden and program activities and make course corrections. (5 points)

5. Goals and objectives (15 Points)

Evaluation will be based on the quality of goals and objectives related to the Program Activities listed in the accompanying Program Guidance. For state applicants, evaluation will assess the soundness of goals and objectives to bring about all eight elements of a statewide childhood blood lead surveillance system. Objectives must be relevant, specific, measurable, achievable, and time-framed. There must be a formal work plan with a description of methods and a timetable for accomplishment of each objective.

6. Project management and staffing (14 Points)

a. A description of proposed staffing for health department roles in CLPP, including the plan to expedite filling of all positions and written assurances that requested positions have been or will be approved by applicant's personnel system. (5 points)

b. A description of the responsibilities of individual health department staff members, including the level of effort and time. (5 points)

c. The plan to provide training to health department personnel and technical assistance to collaborators outside the health department, including proposed design of information-sharing systems. (4 points)

7. Budget justification (not scored).

Evaluation will be based on the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

*Part B: CBLS Programs—Factors To Be Considered*

| Evaluation criterion | Points |
|---|---|
| 1. Problem statement and evidence of need | 10 |
| 2. Surveillance activities | 30 |
| 3. Use of existing resources | 10 |
| 4. Collaboration and statewide planning | 10 |
| 5. Progress toward CBLS | 20 |
| 6. Project sustainability | 10 |
| 7. Personnel | 10 |
| 8. Budget and justification | (1) |
| Total Maximum Points | 100 |

[1] Not scored.

*Part B: CBLS Programs—Factors To Be Considered*

1. Problem statement and evidence of need (10 Points)

a. The applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in the jurisdiction, using evidence (as available) of incidence and/or prevalence and demographic indicators. (5 points)

b. The applicant's description of and the extent of current prevention activities, including need, available resources, gaps, and use of this award to address gaps. (5 points)

2. Surveillance activities (30 Points)

The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which a proposed schedule for accomplishing each activity and methods for evaluating each activity are clearly defined and appropriate. The following points will be specifically evaluated:

a. How laboratories are identified and data will be transmitted. (3 points)

b. How data will be collected and managed. (3 points)

c. How quality of data and timeliness and completeness of reporting will be ensured. (3 points)

d. How data will be used by program. (3 points)

e. How summary data will be reported and disseminated. (3 points)

f. How and when data will be analyzed. (3 points)

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level). (3 points)

h. Time line and methods for evaluating CBLS approach. (3 points)

i. Protocols for follow-up of individuals with elevated BLLs. (3 points)

j. Ability of the system to provide data to estimate the burden of lead exposure in the state and conduct special studies. (3 points)

3. Use of existing resources (10 Points)

The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies.

4. Collaboration and statewide planning (10 Points)

The approach to developing and carrying out an inclusive statewide screening plan as outlined in Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials.

5. Progress toward complete blood-lead surveillance (20 Points)

a. The extent to which the proposed activities are likely to result in substantial progress toward establishing a complete statewide childhood blood lead surveillance activity. (15 points)

b. A description of how data will be used to measure impact of public policy decisions. (5 points)

6. Project sustainability (10 Points)

The extent to which the proposed activities are likely to result in the long-term maintenance of a complete statewide CBLS system. In particular, specific activities that will be undertaken by the state during the project period to ensure that the surveillance program continues after completion of the project period.

7. Personnel (10 Points)

The extent to which the qualifications and time commitments of project

personnel are clearly documented and appropriate for implementing the proposal.

8. Budget justification (not scored).

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

*Part C: Assessment/Evaluation Studies—Factors To Be Considered*

| Evaluation criterion | Points |
|---|---|
| 1. Study protocol | 45 |
| 2. Project personnel | 20 |
| 3. Project management | 35 |
| 4. Budget and justification | (1) |
| 5. Human Subjects | (1) |
| Total Maximum Points | 100 |

[1] Not scored.

*Part C: Assessment/Evaluation Studies—Factors To Be Considered*

1. Study protocol (45 Points)

The protocol's scientific soundness (including adequate sample size with power calculations), quality, feasibility, consistency with the project goals, and soundness of the evaluation plan (which should provide sufficient detail regarding the way in which the program will be implemented to facilitate replication of the program).

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; and (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

2. Project personnel (20 Points)

The qualifications, experience (including experience in conducting relevant studies), and time commitment of the staff needed to ensure that the study will be carried out.

3. Project management (35 Points)

Schedule for implementing and monitoring the proposed study. The extent to which the application documents specific, attainable, and realistic goals and clearly indicates the performance measures that will be monitored, how they will be monitored, and with what frequency. This section should contain enough detail to determine at the end of each budget year the extent to which the project is on target in completing the study process and outcome objectives.

4. Budget justification (not scored).

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

5. Human subjects (not scored).

The extent to which the applicant complies with the Department of Health and Human Services regulations (45 CFR Part 46) regarding the protection of human subjects.

**Executive Order 12372 Review**

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If the SPOCs have comments they should be sent to Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Atlanta, GA 30305, no later than 60 days after the application due date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' state process recommendations it receives after that date.

**Public Health System Reporting Requirement**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance number is 93.197.

**Other Requirements**

*Paperwork Reduction Act*

Data collection initiated under this grant has been approved by the Office of Management and Budget under number 0920–0282, ''Childhood Lead Prevention Grant Reporting''. Exp. Date 10/98. OMB clearance for the data collection for the surveillance activities, ''Childhood Blood Lead Surveillance System OMB No. 0920–0337, Exp. Date 1/98'' is pending approval by OMB.

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

*Women and Minority Inclusion Policy*

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where a clear and compelling rationale exists that inclusion is inappropriate or not feasible, this situation must be explained as part of the application.

In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

**Application Submission and Deadline**

Applicants submitting for Part A (CLPP program) or Part B (CBLS program) please submit the original and two copies of the PHS 5161–1 (OMB Number 0937–0189).

Applicants submitting for Part C (additional and supplemental funds) please submit an original and five copies of the PHS 398.

All applications must be submitted to Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch,

Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before March 31, 1998.

*1. Deadline*

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

*2. Late Applications*

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director, and telephone number.

**Where to Obtain Additional Information**

To receive additional written information, call 1–888-GRANTS4. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 98018. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796 (Internet address lgt1@cdc.gov).

This and other CDC announcements are also available through the CDC homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov.

CDC will not send application kits by facsimile or express mail.

Please refer to Announcement Number 98018 when requesting information and submitting an application.

Technical assistance on CLPP program or Part C. activities may be obtained from Claudette A. Grant, Acting Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop F–42, Atlanta, GA 30341–3724, telephone (770) 488–7330 (Internet address cag4@cdc.gov).

Technical assistance on CBLS program activities may be obtained from Sharunda D. Buchanan, Ph.D., Epidemiologist, Surveillance and Programs Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop F–47, Atlanta, GA 30341–3724, telephone (770) 488–7060 (Internet address sdb4@cdc.gov).

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: January 27, 1998.

**Joseph R. Carter,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention.*

Appendix A: Background on CDC's estimate of number and proportion of children at high risk for lead exposure by state.

To provide states with general guidance about the appropriate amount of funding to request under this Program Announcement, CDC estimated the number and percentage of children with EBLLs for each state. CDC used a logistic-regression model to estimate the contribution of four major risk factors to the probability that an individual child would have a blood lead level (BLL) of at least 10 µg/dL. The selected risk factors were based on data from Phase 2 of the Third National Health and Nutrition Examination Survey (NHANES III, Phase 2) and included the age and race of children, age of housing, and family income. The model established a relative contribution or ''coefficient'' for each of these factors. These coefficients were then applied to the relevant categories of 1990 census data for each state to produce an estimate of both *the number* and *the percentage* of children with elevated BLLs in the state.

CDC's purpose in estimating the number and percentage of children with EBLLs in each state is to approximate the level of effort that may be required to provide prevention services to the entire population of a state. In accordance with this purpose, CDC adjusted the level of effort projected for state-level CLPP Programs in states with one or more locales currently funded under this grant program.

To derive the funding category for each state, CDC gave twice as much weight to the estimated percentage of children with elevated BLLs as to the estimated number of children with elevated BLLs.

**Note:** The categorization scheme developed for use in this Program Announcement is likely to be of only limited usefulness for other purposes. The use of an approximation is necessary because of the wide variation among states in the extent to which their pediatric populations are exposed to lead.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Announcement Number 813]**

### Research Studies Evaluating Demonstration Projects on Feasibility of STD Treatment for HIV Prevention in the United States

**Introduction**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program for demonstration projects on the feasibility of STD treatment for HIV prevention.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (To order a copy of ''Healthy People 2000,'' see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**

**Authority**

This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act [42 U.S.C. 241(a) and 247b(k)(2)], as amended.

Applicable program regulations are set forth in 42 CFR Part 52, entitled ''Grants for Research Projects.''

**Smoke-Free Workplace**

CDC strongly encourages all cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive

Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

**Eligible Applicants**

Eligible applicants are the direct recipients of Federal Sexually Transmitted Disease/Accelerated Prevention Campaign (STD/APC) project grants or HIV Prevention cooperative agreements. Eligibility is further limited to areas with a gonorrhea case rate of more than 200 per 100,000 or a syphilis case rate of more than 9 per 100,000 (based on National Surveillance Data) for calendar year 1996. The HIV prevention program and STD prevention program within the same locale must collaborate with each other and submit one application. These areas are: Alabama, Arkansas, Baltimore, Chicago, Delaware, Georgia, Louisiana, Maryland, Mississippi, North Carolina, Philadelphia, San Francisco, South Carolina, Tennessee, Virgin Islands, and Washington, D.C. These applicants have access to STD clinic and other clinic populations at risk for HIV and other STDs and have continuing high incidence of syphilis or gonorrhea.

**Availability of Funds**

Approximately $400,000 is available in FY 1998 to fund up to two awards for demonstration projects on the feasibility of STD treatment for HIV prevention. It is expected that the average new award will be approximately $200,000 and will begin on or about April 1, 1998. Awards will be funded for a 12-month budget period within a project period of up to 2 years. Funding estimates are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Use of Funds**

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant State or local health department funds or for inpatient care, medications, or construction.

**Restrictions on Lobbying**

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their sub-tier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Pub. L. 105–78) states in Section 503(a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress itself or any State legislature. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

**Background**

The AIDS epidemic continues in the United States with over 548,102 cases of AIDS, including 78,654 cases in females and 7,296 cases in children reported to the CDC as of June 30, 1996. More than 275,000 persons are reported to be living with HIV infection. Both HIV cases and HIV-associated deaths are expected to continue to increase over the next decade. Surveillance data indicate that heterosexual transmission accounts for an increasing number of new infections in the U.S. Among women, heterosexual transmission was the most common exposure category for new cases of AIDS reported in 1995–96, accounting for 41 percent of cases. In addition, African Americans, Hispanics, women, adolescents, and persons living in the Southeastern U.S. are increasingly represented in both AIDS cases and new HIV infections.

Current evidence suggests that the growth in the heterosexual HIV epidemic, particularly among the most vulnerable populations is, in part, fueled by other STDs that increase transmission efficiency. STDs in the HIV-uninfected increase their susceptibility to HIV; STDs in the HIV-infected increase their likelihood of transmitting HIV to others. Studies have demonstrated the increased risk of HIV seroconversion to be associated with both genital ulcer disease (GUD) and non-ulcerative STDs. HIV transmission has been associated with concurrent infection with syphilis, herpes, chancroid, gonorrhea, chlamydia, or trichomoniasis. STDs increase both the prevalence of HIV shedding and the magnitude of HIV RNA in semen and cervico-vaginal secretions. Treatment of the STD reduces the prevalence and magnitude of viral shedding. For example, gonococcal infection increases quantitative shedding of HIV RNA among men by about 10-fold, and treatment restores HIV shedding to near baseline levels. Similar effects have been demonstrated in HIV infected women with gonorrhea, chlamydia and cervico-vaginal ulcers. The Mwanza trial, which randomized communities in rural Tanzania to either their existing standard of care or an intervention that established an infrastructure to diagnose and treat STDs, found a 42 percent reduction in HIV incidence over 2 years in the intervention communities. Sexual behavior and condom use remained unchanged in the communities. Thus, there is compelling individual and community-level evidence that treating STDs can decrease HIV transmission.

Despite sound scientific evidence for treating STDs to prevent HIV, the question remains how best to structure such an intervention in the U.S. To effectively target STD treatment for HIV prevention in the U.S., an intervention must target populations with a high incidence of STDs and HIV. Because STDs increase both infectivity and susceptibility, detection and treatment should target both HIV-infected and HIV-uninfected persons. These projects will focus on both persons infected with STDs who are reached by the health care system but not diagnosed and treated (e.g., patients in clinical situations who do not receive STD screening, diagnosis and treatment), and on persons not reached by the health care system (e.g., because of asymptomatic infection or problems of accessing health services). In this program we are particularly interested in structural or other interventions aimed at changing the environment. An intervention might include such program elements as referral of HIV-infected and HIV-uninfected-at-risk persons for STD care (e.g., screening, diagnosis and treatment for STDs), increasing access to STD care, promoting risk assessment and screening of persons asymptomatically

infected with STDs, diagnosing symptomatic STDs, ensuring effective treatment and follow-up for STDs, including STD risk-reduction counseling, and partner management for persons with STDs. Because populations-at-risk may access health care settings that are not providing the full array of services, study sites might include health care settings that serve those at high risk. Additionally, since populations-at-risk may not access health care, study sites might also include non-health care venues where high-risk persons may be found.

The National Center for HIV, STD, and TB Prevention (NCHSTP) goals are to:

1. Increase public understanding of, involvement in, and support for, HIV, STD, and TB prevention.

2. Ensure completion of therapy for persons identified with active TB or TB infection.

3. Prevent or reduce behaviors or practices that place persons at risk for HIV and STD infection or, if individual is already infected, place others at risk.

4. Increase individual knowledge of HIV serostatus and improve referral systems to appropriate prevention and treatment services.

5. Assist in building and maintaining the necessary State, local, and community support infrastructure and technical capacity to carry out the necessary prevention programs.

6. Strengthen current systems and develop new systems to accurately monitor the HIV epidemic, STDs, and TB, as a basis for assessing and directing prevention programs.

**Purpose**

The purpose of this program is to evaluate the feasibility of establishing an HIV prevention program in the U.S. that incorporates effective STD screening, diagnosis and treatment, in addition to existing HIV prevention services. Following the identification of existing problems in HIV and STD services, those problems will be prioritized, a protocol will be designed and implemented in a pilot fashion to establish the feasibility of a health service intervention package (focusing on STD treatment), and a set of evaluation tools will be developed to measure the intervention's effectiveness. The demonstration projects will likely form the basis for an expanded future multi-site initiative, and provide important information on such operational and evaluation issues as implementation, longitudinal follow-up, data collection, and assessment of outcomes.

This project is conceived as a pilot effort to assess the feasibility and likely prevention effectiveness of improving access to, and the quality of, STD services for heterosexuals at risk of transmitting HIV and of becoming infected with HIV. This project will describe the feasibilities and barriers to improving and better linking STD diagnostic and treatment services and HIV counseling, testing and treatment services within a variety of settings (e.g., drug treatment sites, STD clinics, HIV counseling and testing sites, prenatal and family planning clinics, correctional facilities including juvenile detention facilities, emergency medical and urgent care facilities, adolescent clinics, school clinics, primary care settings in the private sector, community health centers, existing outreach settings, and potential new outreach settings).

In a defined population where high levels of HIV and STD coexist, this project will have three phases consisting of: (I) An assessment and prioritization phase; (II) an intervention and protocol development phase; and (III) an implementation and evaluation phase.

In Phase I (to be accomplished in the first year of the project), a community-based assessment will be conducted to determine who is at highest risk within the community (i.e., who has HIV and STD, and who has STD and is at risk for acquiring HIV), and how best to reach them. This phase would focus on a review of the epidemiology of HIV and STD trends in the community, on identifying where high-risk persons are currently accessing health care and other social services, what types of services are available (e.g., screening, diagnosis and treatment, and counseling), and what are the gaps in available services. This assessment could draw on existing data (e.g., through HIV community planning data collection) or on newly collected data, and may include data derived from public and private sources of care. Arising from this assessment, a local prioritization process would be used to develop Phase II activities. If most high-risk persons are utilizing health care services but are not being screened, diagnosed, or treated, then interventions will focus on improving the quality of STD care (increasing screening and treatment in existing sites and developing referral networks). If high-risk persons are not accessing health care (for reasons including: asymptomatic infections, lack of knowledge about STD status and need for care, perceived or actual barriers to health care, etc.), then interventions will focus these specific problems and include establishing new opportunities for provision of services to expand access and utilization (e.g., increasing screening and health services at correctional facilities, drug treatment centers, or outreach settings).

In Phase II (to be accomplished by the end of the first year of the project, with the exception of developing and testing the evaluation criteria which is expected to extend into the second year of the project), the intervention and protocol development phase, interventions will be developed to address the specific priority needs. Following development of the intervention, a study protocol will be designed to test the feasibility, acceptability, operational requirements of the interventions, and to develop an evaluation plan including appropriate process and outcome measures for the interventions. The protocol will include choice of sites, implementation methods, use of comparison groups, and details of the evaluation plan.

In Phase III (to be accomplished by the end of the second year of the project), the implementation and evaluation phase, the model intervention(s) will be implemented and evaluated in a pilot feasibility study.

**Program Requirements**

In conducting activities to achieve this program, the recipient shall be responsible for the activities listed under A. (Recipient Activities), and CDC shall be responsible for conducting activities listed under B. (CDC Activities).

*A. Recipient Activities*

1. Collaborate on Study Design for the Three Phases: Recipients will meet together with CDC to discuss potential study designs and formative research required to develop the study protocol, process, and operations procedures.

2. Collaborate with Other Recipient and CDC During the Three Study Phases: Collaboration will begin with approaches to study design aimed at content, operations, and process of ultimately conducting the three study phases. Collaboration will include (a) communication with CDC staff and the other recipient, and (b) development of common study protocols, common data collection instruments, common specimen collection protocols, and common data management procedures. Recipients will collaborate with each other in all quality control procedures, and in regularly scheduled meetings and conference calls.

3. Conduct Productive and Scientifically Sound Studies: Recipients will identify, recruit, obtain informed

consent forms, and enroll and follow to completion, a minimum of 500 participants as determined by the study protocol and the program requirements. Recipients will perform laboratory tests as determined by the study protocol, and will follow study participants over time as determined by the protocol.

4. Share Data and Specimens: Recipients will share data and specimens (when appropriate) with CDC to answer specific research questions.

5. Collaborate on Publication of Results: Recipient researchers will work closely with CDC staff to develop at least one publication recording results from both sites for a peer-reviewed journal on the study findings. Recipients will also, as appropriate and relevant, develop secondary study hypotheses or site-specific hypotheses and for these, analyze data gathered over the course of the study and in collaboration with CDC staff, present and publish data.

Recipient Activities Specific to the Study Phases Will Include:

During Phase I (assessment and prioritization):

6. Identify Those with STDs (among HIV-infected and HIV-uninfected persons): Within a defined population or geographic area, existing data will be reviewed and new information may be obtained through surveys to determine the extent of STDs and HIV in a study area, the demographic characteristics of these populations of infected persons, and trends in the epidemiology of STD and HIV. The focus should be on persons at risk for acquiring STDs heterosexually.

7. Assess How Good the Current Health Care System Is at Reaching and Providing Care for HIV and STD Infected Populations: This activity will include determining where the STD infected population are getting care, and what care they are getting (e.g., type and quality of care), what services are actually available at the site to which they are referred, where they are getting other services (e.g., social services, drug treatment), and where else they might be found (e.g., correctional facilities). Determine what can be done to increase the numbers of infected (asymptomatic or symptomatic) persons who are diagnosed and treated for STDs within the existing organizational infrastructure. (This work could be done through individual and community level analysis, including site surveys, and interviews with at-risk persons (HIV/STD infected or uninfected) and service providers.)

8. Identify and Prioritize Needed Services and the Venues for These Services: Evaluate the opportunity for improving the quality of existing services. If additional services are needed, should they be through direct on-site provision or via referral? If referral, how can linkages be developed between sites to better coordinate service delivery? (This work could be done through site observations, in-depth interviews with community members and service providers, literature review on direct service vs. referral models vs. other approaches to coordinated service delivery.)

9. Identify Important Barriers, Including Patients' and Potential Patients' Perceptions of the Barriers, for Those with STDs (HIV-infected and HIV-uninfected) to Access Needed Services: Determine what can be done to increase the numbers of symptomatic infected persons diagnosed and treated, and to decrease the time it takes to receive diagnostic and treatment services within the existing organizational infrastructure. Determine what can be done to increase the numbers of asymptomatic infected persons screened, diagnosed and treated. (This work could be done through individual interviews and focus groups with at-risk (HIV/STD infected or uninfected) persons, and with health and social service providers and community planners and community-based organizations.)

During Phase II (intervention and protocol development):

10. In Collaboration with Other Recipient, Design Model Intervention(s) Based on the Specific Needs, as Identified and Prioritized in Phase I.

11. In Collaboration with Other Recipient, Develop a Protocol to Implement and Evaluate the Intervention(s) that Will Include Specific Outcome Measures.

Phase III (implementation and evaluation):

12. Implement and Assess the Feasibility of the Intervention(s) to Improve Delivery of and Access to High Quality HIV/STD Services.

13. Develop, Implement, and Test Evaluation Techniques for Assessing Outcomes of a Future, Full Scale Demonstration Project: Explore the use of behavioral outcomes, biological disease-related outcomes (incidence of STD/HIV), and health services measures (such as cost, utilization, access).

*B. CDC Activities*

1. Provide Technical Assistance and Coordination: CDC staff may assist in the design and conduct of the research and provide coordination of the project. The final design will be determined by a collaborative process.

2. Provide Scientific Expertise: CDC staff will provide current scientific and programmatic information relevant to the project, and may provide technical assistance in the design and conduct of the research (including plan, operations, and evaluation) throughout the project. CDC staff will assist in designing a data management system and may coordinate research activities among the different study sites. CDC staff may also provide technical guidance in the development and dissemination of study protocols, consent forms, and questionnaires.

3. Analyze Study Data and Coordinate Publication: CDC staff may assist in the analysis of data gathered over the course of the study in each site and in cross-site comparisons and may assist the recipients to develop at least one overall publication describing the project results.

4. Share Data and Specimens: CDC staff may assist in the dissemination of study results and distribution of specimens.

5. Monitor and Evaluate Scientific and Operational Accomplishments of the Project: This will be accomplished through periodic site visits, telephone calls, and review of technical reports and interim data analysis.

**Technical Reporting Requirements**

An original and two copies of semi annual progress reports must be submitted no later than 30 days after the end of each 6-month budget period. An original and two copies of a financial status report (FSR) are required no later than 90 days after the end of each budget period. A final progress report and FSR are due no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

**Application Content**

Applications must be developed in accordance with PHS Form 5161–1 (OMB Number 0927–0189), information contained in the program announcement, and the instructions and format provided below.

Applicants are required to submit an original and two copies of the application. Number each page clearly and sequentially, and provide a complete index to the application and its appendices. The original and each copy of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten, double spaced, with unreduced type on 8½″ × 11″ paper, with at least 1″ margins, headings and footers, and printed on one side only. Materials which should be part of the

basic application will not be accepted if placed in the appendices. The application should not exceed 25 pages (exclusive of official PHS application pages and relevant attachments).

Applicants for demonstration projects on the feasibility of STD treatment for HIV prevention must demonstrate in the application an ability to access persons infected with STDs or HIV, and persons at high risk for acquiring STDs or HIV. Applicants must also demonstrate an ability to provide appropriate HIV and STD prevention counseling and HIV and STD testing for persons with STDs or at risk of acquiring STDs. In addition, applicants must demonstrate an ability to enroll at least 500 participants per year, of whom at least 35 percent are women. Applicants must demonstrate high prevalence of STDs (>15 percent) and high prevalence of HIV (>2 percent) in STD clinic settings, an ability to complete high rates of participant follow-up, collection and handling of laboratory specimens, and collection of other relevant data. Applicants must demonstrate cost-efficient local availability of staff to complete data entry and data management. Applicants must be willing to participate collaboratively with each other and with CDC in conducting this research study.

The application must address the following:

1. Background

a. Describe the STD clinical and preventive health services available in the community through both public and private sources of care, including current collaboration between STD and HIV prevention programs. Describe availability of STD services in HIV counseling and testing (C & T) sites.

b. Describe the epidemiology of HIV, gonorrhea, chlamydia, and primary and secondary (P&S) syphilis in calendar year 1996 for the proposed project area.

c. Describe those at risk for heterosexually acquired STDs and HIV, and their access to health care. Information on the percentage uninsured, unemployed, under the poverty level, and those receiving public assistance is desirable.

d. Include additional background on any health care policies and additional environmental and socio-demographic factors that may be relevant to the study of STD services. Examples include privatization of categorical STD clinics, existing or pending Federal Medicaid waivers, existing contracts, memoranda of understanding, agreements or arrangements between health plans and health departments.

2. Objectives

Provide a focused research agenda with long-term and short-term objectives that are realistic, specific, measurable, time-phased, and consistent with the objectives of the announcement.

3. Site Selection

Applicants must document access to populations with high syphilis or gonorrhea rates and high HIV prevalence rates. High HIV prevalence rates can be documented by surveys such as job corps, other seroprevalence surveys (e.g., among patients attending STD clinics, adolescent clinics, drug treatment centers, and among incarcerated populations), or survey of child bearing women data.

Define a research site based on specific information included in the background. Provide information on participating clinics and community programs in the project area. Include available information on monthly and annual numbers of clinic patients and their STD and HIV prevalence rates, and STD and HIV prevalence rates in persons participating in community programs in the project area.

Emphasis will be placed on applicant's demonstration of access to relevant clinic populations and community program populations such as adolescents, women, minorities, and Medicaid populations.

4. Methods

Describe the methods and activities that will be undertaken to accomplish the objectives, including, when possible, outcomes to be evaluated (i.e., health services-related outcomes, program-related outcomes, or STD and HIV specific health-related outcomes), the use of appropriate comparison groups, the sampling scheme and sample size calculations, qualitative and quantitative methods, and how data will be accessed, collected, and used. The methods should address the different phases (Phase I, II & III) of the project. Provide a detailed time line with beginning and end dates for each phase, with the anticipation of completing Phase I and part of Phase II in the first year of the project and all of Phases II & III in the second year of the Project.

5. Evaluation Plan

Provide an evaluation plan to monitor the effectiveness of the project activities and the progress made toward meeting the objectives.

6. Research Capacity

Provide evidence of research capability. Describe past and current research experience, including the experience of the proposed staff who will participate in this project (include details of experience and competence in research design, data collection, analysis and dissemination). Attach the curriculum vitae of key staff. Describe your plan for project administration including details of the proposed collaboration between STD clinic and program staff and HIV program staff. The research team should include qualified and experienced personnel in epidemiology, health services research, and behavioral science, and the team should have a demonstrable balance of experience in STD management and HIV prevention. The eligible applicants are encouraged to collaborate with other organizations such as colleges, universities, research institutions, hospitals and other public and private organizations to carry out project activities. Minimum requirements for the research team are a principle investigator, project supervisor, and staff capable of providing data collection, data management, laboratory support, and clerical services.

7. Letters of Support

Because each eligible locale can submit only one application, a Letter of Support is required by each Project Director, if the HIV prevention program and STD prevention program are administered separately.

8. Budget

Provide a detailed, line-item annualized budget for the first year of the Project which should cover Phase I in its entirety (as defined above) and part of Phase II and a budget narrative that justifies each line-item. Provide a summary budget for the second year of the Project covering the remaining part of Phase II and all of Phase III.

The budget should anticipate the need for appropriate staff (noted above in ''6. Research Capacity''), travel for principal investigator and project supervisor to meet with CDC two times per year, travel for outreach, supplemental needs related to STD and HIV clients and their longitudinal participation, and other needs. The budget should allocate at least 50 percent of resources to the STD prevention program activities (e.g., screening, diagnosis, treatment, and counseling for STDs).

**Evaluation Criteria**

Applications for demonstration projects on the feasibility of STD treatment for HIV prevention will be reviewed and evaluated according to the following criteria:

1. Background and Objectives (5 Points)

Understanding of purpose and objectives of this research and its relation to national program goals as reflected in the statement of research background and research questions.

2. Site Selection (25 Points)

The extent to which the choice of the project area and specific clinic and community sites to conduct this research will be generalizable to other settings or populations, and is appropriate to the local and national objectives, STD and HIV epidemiology, social demography, and health care system. Emphasis will be placed on demonstrated access to populations at high risk for heterosexual transmission of STDs and HIV in the project area, particularly persons who currently may not be reached by the health care system. Evidence of high gonorrhea, syphilis, and HIV prevalence should be demonstrated. Prevalence of other STDs might also be demonstrated. Highest points will be given to applications demonstrating the capacity to enroll a substantial number of participants at risk for STDs and HIV (>500 persons annually) and undertake longitudinal follow-up of these persons.

Consideration will also be given to the extent to which the proposed site includes appropriate participation of women and racial and ethnic minority populations.

3. Methods (25 Points)

The appropriateness and adequacy of the research design and methodology proposed to answer the research questions. This includes: (a) The selection of appropriate outcomes related to health services, STD and HIV programs, and STD morbidity; (b) the use of appropriate comparison groups; (c) the inclusion of appropriate sampling schemes, sample size calculation, handling of sampling biases; (d) access to the relevant data sources and the plan for data collection; and (e) the description of the specific quantitative and qualitative analytic technique to be used to answer the research questions.

4. Evaluation (20 Points)

The extent to which the applications present a sound evaluation plan that includes aspects such as: Research progress measurements and communications, baseline data collection; intervention(s) testing, ability to measure specific intervention outcomes (including but not exclusively STD and HIV outcomes); and economic evaluation.

5. Research Capacity (25 Points)

Overall ability to perform the technical aspects of the project including: (a) The availability of qualified and experienced personnel for a multi-disciplinary team in health services research including level of education and training, and relevant research experience of the principle investigator and key research personnel; (b) the availability of adequate facilities, general environment, and resources for the conduct of the proposed research; (c) assurance that staff can be hired within 4 months of award of monies; (d) plans for the administration of the project(s), including a detailed and realistic time line for the specified activities; (e) details of the proposed project-level collaboration between STD clinic and program staff and HIV program staff; and, (f) demonstration of the applicant's ability, willingness, and need to collaborate with CDC and researchers from other study site in study design and analysis, including use of common study protocols and data collection instruments, and (when appropriate) sharing of data and specimens.

6. Budget (not Scored)

The appropriateness of budget estimates in relation to the proposed research. The extent to which budget is reasonable, clearly justified, and consistent with the intended use of funds. The budget should allocate at least 50 percent of resources to the STD prevention program activities. (e.g., screening, diagnosis, treatment, and counseling for STDs).

7. Human Subjects (not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

**Funding Preferences**

CDC reserves the right to make final funding selections based on geographic diversity and applicants with higher documented prevalence of STDs and HIV in proposed clinic study sites.

**Executive Order 12372 Review**

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local governmental review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on application submitted to CDC, they should send them to Adrienne S. Brown, Acting Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Numbers are: 93.941, HIV Demonstration, Research, Public and Professional Education Projects; and 93.978, Preventive Health Services Sexually Transmitted Diseases Research, Demonstration, and Public Information and Education Grants.

**Other Requirements**

*Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Human Subjects*

This program involves research on human subjects. Therefore, all applicants must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

*HIV Program Review Panel*

Recipients must comply with the document entitled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (June 1992) (a copy is in the application kit). To meet the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a State or local health department. The names of the review panel members must be listed on the Assurance of Compliance form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

*Patient Care*

Applicants should provide assurance that all STD or HIV-infected patients enrolled in the proposed studies will be linked to an appropriate local care system that can address their specific needs such as medical care, counseling, social services, and therapy.

*Women, Racial and Ethnic Minorities*

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, dated Friday, September 15, 1995.

*Confidentiality*

Recipients must have confidentiality and security provisions to protect data collected through HIV/AIDS surveillance, including copies of local data release policies; employee training in confidentiality provisions; State laws, rules, or regulations pertaining to the protection or release of surveillance information; and physical security of hard copies and electronic files containing confidential surveillance information.

Recipients must describe any laws, rules, regulations, or health department policies that require or permit the release of patient identifying information collected under the HIV/AIDS surveillance system to entities outside of the public health department and measures the health department has taken to ensure that the confidentiality of individuals reported to the surveillance system is protected from further or unlawful disclosure.

**Application Submission and Deadlines**

*1. Preapplication Letter of Intent (LOI)*

A non-binding letter of intent-to-apply is requested from potential applicants. An original and two copies of a two-page, typewritten LOI should be submitted to the Grants Management Branch, CDC (see ''Applications'' for address). It should be postmarked no later than February 13, 1998. The letter should identify the announcement number, title of the specific research activity for which application is being submitted, the name and institutional affiliation of the principal investigator, and the identity of other key participants and participating institutions. No attachments, booklets, or other documents accompanying the LOI will be considered. The letter should also include the estimated total cost of the research activity and the percentage of the total cost being requested from CDC. The LOI does not influence review or funding decisions, but it will enable CDC to plan more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

*2. Applications*

An original and two copies of the application Form PHS 5161–1 (Revised 7/92, OMB No. 0937–0189) must be submitted on or before March 13, 1998 to Adrienne S. Brown, Acting Grants Management Officer, Attention: Kathy Raible, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–15, Atlanta, GA 30305.

*3. Deadlines*

A. Applications will meet the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the objective review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

B. Applications that do not meet the criteria in 2.A.1. or 2.A.2. above are considered late applications. Late applications will not be considered in current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

A complete program description and information on application procedures, are contained in the application package. Business management technical assistance may be obtained from Kathy Raible, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–15, Atlanta, Georgia 30305, telephone (404) 842–6649, or via email at: <kcr8@cdc.gov>.

Programmatic technical assistance may be obtained from Mary Kamb, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC), 1600 Clifton Road; Mailstop E–46, Atlanta, Georgia 30333, telephone (404) 639–2080, or via email at: <mlk5@cdc.gov>, or Kathleen Irwin, Division of STD Prevention, NCHSTP, CDC, 1600 Clifton Road; Mailstop E–07, Atlanta, Georgia 30333, telephone (404) 639–8276, or via email at: <kli1@cdc.gov>.

Please refer to announcement number 813 when requesting information and submitting an application.

The announcement will be available on one of two Internet sites on the publication date: CDC's home page at <http://www.cdc.gov>, or at the Government Printing Office home page (including free access to the **Federal Register**) at <http://www.access.gpo.gov>.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full

Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) referenced in the ''INTRODUCTION'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: January 27, 1998.

**Joseph R. Carter,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 98–2571 Filed 2–2–98; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Revised Diphtheria, Tetanus, and Pertussis (DTD/DTaP/DT) Vaccine Information Materials; Amendment

A notice published in the **Federal Register** on January 9, 1998, [63 FR 1730]. The notice is amended as follows:

On page 1733, first column, under number 9. After ''Visit the CDC website at http://www.cdc.gov/nip'' line and before ''DTP/DTaP/DT***'' add the following:

U.S. Department of Health and Human Services
Centers for Disease Control and Prevention
National Immunization Program

All other information and requirements of the January 9, 1998, notice remain the same.

Dated: June 27, 1998.

**Joseph R. Carter,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 98–2570 Filed 2–2–98; 8:45 am]

**BILLING CODE 4163–18–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Anti-Infective Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* Anti-Infective Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA regulatory issues.

*Date and Time*: The meeting will be held on February 19, 1998, 8 a.m. to 5 p.m., and on February 20, 1998, 8:30 a.m. to 2 p.m.

*Location:* Gaithersburg Hilton, Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

*Contact Person:* Ermona B. McGoodwin or Danyiel A. D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On February 19, 1998, the committee will discuss new drug applications (NDA's) 50–747 and 50–748 quinupristin/dalfopristin (Synercid®, Rhone-Poulenc Rorer Pharmaceuticals, Inc.) for use in the treatment of vancomycin-resistant *Enterococcus faecium* (VREF) infections, complicated skin and skin structure infections, community-acquired pneumonia, and hospital-acquired (nosocomial) pneumonia. On February 20, 1998, the committee will meet in closed session to permit discussion and review of trade secret and/or confidential information.

*Procedure:* On February 19, 1998, from 8 a.m. to 5 p.m. the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 13, 1998. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. on February 19, 1998. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before February 13, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations:* On February 20, 1998, from 8:30 a.m. to 2 p.m. the meeting will be closed to permit discussion and review of trade secret and/or confidential information. (5 U.S.C. 552b(c)(4)). The investigational new drug (IND) and Phase I and II drug products in process will be presented.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 27, 1998.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 98–2577 Filed 2–2–98; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Drug Abuse Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* Drug Abuse Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA regulatory issues.

*Date and Time:* The meeting will be held on February 19, 1998, 8:30 a.m. to 5:30 p.m.

*Location:* Holiday Inn, Versailles Ballrooms III and IV, 8120 Wisconsin Ave., Bethesda, MD.

*Contact Person:* Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4090, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12535. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The committee will discuss the scientific evidence for initiating a scheduling action for ULTRAM® (tramadol hydrochloride), R. W. Johnson Pharmaceutical Research Institute, under the Controlled Substances Act. The committee will also evaluate the effectiveness of the independent steering committee in detecting, moderating, and preventing the physical dependence and abuse of ULTRAM® and make suggestions for improving the surveillance of its misuse.

*Procedure:* On February 19, 1998, from 8:30 a.m. to 3:45 p.m., the meeting is open to the public. Interested persons may present data, information, or views,

orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 11, 1998. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 11, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations:* On February 19, 1998, from 3:45 p.m. to 5:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The investigational new drug and Phase I and II drug products in process will be presented and recent action on selected new drug applications will be discussed.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 27, 1998.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 98–2576 Filed 2–2–98; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Pseudomonas Exotoxin A-Like Chimeric Immunogens**

David J. Fitzgerald (NCI)

Serial No. 60.052,375 filed 11 Jul 97 (Assignee: United States Government)

*Licensing Contact:* Robert Benson, 301/496–7056 ext. 267

This invention concerns a recombinantly made chimeric immunogen comprising a non-toxic version of Pseudomonas exotoxin A (PE) in which the Ib domain is replaced with a non-native epitope. This immunogen can be used as a vaccine, either as a protein or as DNA, and can elicit humoral, cell-medicated and secretory immune responses against the non-native epitope. The non-native epitope fits into the cysteine-cysteine loop of the Ib domain, thus epitopes normally part of a loop are held in their natural conformation. Chimeric immunogens comprising the V3 loop of the HIV–1 env protein have been shown to raise, in rabbits, neutralizing antibodies against clinical isolates of HIV, some cross-protection was seen. Anti-V3 IgA antibodies were raised upon mucosal administration. The claims cover: (a) Chimeric immunogens, (b) nucleic acids encoding chimeric immunogens, (c) antibodies raised against chimeric immunogens, (d) vaccines and methods of immunization.

**Pseudomonas Exotoxin A-Like Chimeric Immunogens for Mucosal Immunity**

David J. Fitzgerald (NCI) and Randall J. Mrsny (Genentech Corp.)

Serial No. 60/056,924 filed 11 Jul 97 (Assignees: United States Government and Genentech Corporation)

*Licensing Contact:* Robert Benson, 301/496–7056 ext. 267

This invention claims the use of the chimeric immunogens claimed in 60/052,375 to elicit a secretory IgA–medicated immune response. The inventors have shown that parenteral and mucosal administration of the HIV V3 loop/Exotoxin A chimeric immunogen to rabbits raises both a humoral and cell-medicated immune response against HIV. Both parenteral and mucosal administration result in IgG and IgA antibodies being raised, mucosal administration resulted in higher IgA production. Compositions comprising secretory IgA reactive with the non-native epitope are also claimed.

**Pin*Point—A Method To Determine Transcription Factor Binding Site In Vivo**

Jay Chung (NHLBI)

Serial Nos. 08/826,622 and 08/825,664 filed 03 Apr 97

*Licensing Contact:* Joseph Contrera, 301/496–7056 ext. 244

Transcription factors play central roles in many disease processes: cancer, AIDS, developmental aberrations, aging and obesity, just to name a few. Therefore, understanding these disease processes and finding cures for them will be greatly assisted by the capability to determine the genes targeted by the transcription factors in vivo. Toward this end, we have designed an in vivo method PIN*POINT) ProteIN POsition Identification with Nuclease Tail). In this method, a fusion protein composed of a chosen protein linked to a non-sequence specific nuclease is expressed in vivo and the binding of the protein to DNA is made detectable by the nuclease-induced cleavage near the binding site. For example, p53-nuclease fusion protein expressed in vivo will bind to the p53 binding site and mark it by cleaving the DNA near it. The cleavage site can be identified by a number of techniques currently available. A mammalian expression vector designed to express a fusion protein consisting of a polypeptide of one's choice and the nuclease is available as are expression vectors for Sp1 nuclease, TBP (TATA binding protein)-nuclease (for identifying promoters of genes) and other transcription factors. PIN*POINT is described in a paper soon to be published by Lee et al., (1998) PNAS 95, 060–974.

Dated: January 23, 1998.

**Barbara M. McGarey,**

*Deputy Director, Office of Technology Transfer.*

[FR Doc. 98–2561 Filed 2–2–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Computer Algorithm for the Identification of Unknown Proteins after Peptide Sequencing (Telephone Conference Call).

*Date:* February 3, 1998.

*Time:* 3:00 p.m. EST.

*Place:* Rockledge Building II, Room 7214, 6701 Rockledge Drive, Bethesda, Maryland 20892.

*Contact Person:* Ivan C. Baines, Ph.D., Two Rockledge Center, Room 7184, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.

*Purpose/Agenda:* To review and evaluate contract proposals.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 27, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–2560 Filed 2–2–98; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

*Name of SEP:* SBIR Topic 53: Commercialization of Laboratory Methods for Assessing the Genetics Response to Chemicals, and Topic 55: Methods for Assessing the Estrogenicity and Other Endocrine Activity of Environmental Chemicals. (Telephone Conference Call)

*Date:* February 23, 1998.

*Time:* 1:00 p.m.

*Place:* National Institute of Environmental Health Sciences, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709.

*Contact Person:* Dr. David Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

*Purpose/Agenda:* To review and evaluate contract proposals.

*Name of SEP:* SBIR Topic 51: Development of Transgenic Teleost Animal Model for Assessing Mutagenesis, and Topic 63: Detection of Mutations in Stem Cell Spermatogonia from Transgenic Mice with Integrated phiX Vector. (Telephone Conference Call)

*Date:* March 13, 1998.

*Time:* 1:15 p.m.

*Place:* National Institute of Environmental Health Sciences, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709.

*Contact Person:* Dr. David Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

*Purpose/Agenda:* To review and evaluate contract proposals.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: January 27, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–2557 Filed 2–2–98; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

*Date:* February 19, 1998.

*Time:* 10:30 a.m.

*Place:* National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

*Contact Person:* Dr. Katherine Woodbury-Harris, Mr. Phillip Wiethorn, Scientific Review Administrators, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892 (301) 496–9223.

*Purpose/Agenda:* To review and evaluate Phase I SBIR Contract Proposal(s).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* March 19, 1998.

*Time:* 8:30 a.m.

*Place:* Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Phone:* (202) 338–4600.

*Contact Person:* Dr. Lillian Pubols, Chief, Scientific Review Branch, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

*Purpose/Agenda:* To review and evaluate a grant application.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: January 27, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–2558 Filed 2–2–98; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Behavioral and Neurosciences.

*Date:* February 11, 1998.

*Time:* 8:00 a.m.

*Place:* Radisson Barcelo Hotel, Washington, DC.

*Contact Person:* Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

*Name of SEP:* Behavioral and Neurosciences.

*Date:* February 12, 1998.
*Time:* 8:00 a.m.
*Place:* Radisson Barcelo Hotel, Washington, DC.
*Contact Person:* Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

*Name of SEP:* Biological and Physiological Sciences.
*Date:* March 12–13, 1998.
*Time:* 8:30 a.m.
*Place:* Holiday Inn-Georgetown, Washington, DC.
*Contact Person:* Dr. Betty Hayden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4206, Bethesda, Maryland 20892, (301) 435–1223.

*Name of SEP:* Multidisciplinary Sciences.
*Date:* March 15–17, 1998.
*Time:* 7:00 a.m.
*Place:* Regal University Hotel, Durham, NC.
*Contact Person:* Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

*Name of SEP:* Biological and Physiological Sciences.
*Date:* March 16, 1998.
*Time:* 2:00 p.m.
*Place:* NIH, Rockledge 2, Room 6168, Telephone Conference.
*Contact Person:* Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, Maryland 20892, (301) 435–1043.

*Name of SEP:* Chemistry and Related Sciences.
*Date:* March 25–27, 1998.
*Time:* 8:00 p.m.
*Place:* Quality Suites, Rockville, MD.
*Contact Person:* Dr. Jean D. Sipe, Scientific Review Administrator, 6701 Rockledge Drive, Room 5152, Bethesda, Maryland 20892, (301) 435–1743.

*Purpose/Agenda:* To review Small Business Innovation Research.
*Name of SEP:* Multidisciplinary Sciences.
*Date:* March 9–10, 1998.
*Time:* 8:30 a.m.
*Place:* Holiday Inn-Georgetown, Washington, DC.
*Contact Person:* Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435–1177.

*Name of SEP:* Chemistry and Related Sciences.
*Date:* March 17–18, 1998.
*Time:* 8:00 a.m.
*Place:* Holiday Inn-Georgetown, Washington, DC.
*Contact Person:* Dr. Jean D. Sipe, Scientific Review Administrator, 6701 Rockledge Drive, Room 5152, Bethesda, Maryland 20982, (301) 435–1743.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93–844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 27, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–2559 Filed 2–2–98; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Coexclusive License: Vaccines for Dengue and Other Flaviviruses

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is comtemplating the grant of a limited field of use coexclusive world-wide license to practice the invention embodied in U.S. Patent No. 5,494,671, issued February 27, 1996 (U.S. Patent Application Serial No. 07/747,785, filed August 20, 1991), entitled ''C-Terminally Truncated Dengue and Japanese Encephalitis Virus Envelope Proteins'' to SmithKline Beecham Biological of Rixensart, Belgium. Publication of this notice should be considered a modification of an earlier notice (62 FR 5836, Feb. 7, 1997). The patent rights in this invention have been assigned to the United States of America.

**DATES:** Only written comments and/or applications for a license which are received by NIH on or before April 6, 1998.

**ADDRESSES:** Requests for a copy of this issued patent, inquiries, comments, and other materials relating to the contemplated license should be directed to: Carol A. Salata, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7735 ext 232; Facsimile: (301) 402–0220; E-mail: salatac@OD.NIH.GOV.

**SUPPLEMENTARY INFORMATION:** The patent describes the use of C-terminally truncated flavivirus envelope proteins in vaccines against flavivirus infections. The inventions also relates to recombinant viruses which encode the truncated protein and to host cells infected therewith.

The prospective coexclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license may be limited to the field of subunit vaccines against Dengue and Japanese Encephalitis produced in prokaryotic or eukaryotic cells. This license will not include live virus, killed virus or DNA-based vaccines or the use of vaccinia virus as a vector, or immunogen.

This prospective coexclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 23, 1998.

**Barbara M. McGarey,**

*Deputy Director, Office of Technology Transfer.*

[FR Doc. 98–2562 Filed 2–2–98; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Toxicology Program; Call for Public Comments; Substances, Mixtures and Exposure Circumstances Proposed for Listing in or Delisting (Removing) From the Report on Carcinogens, Ninth Edition

### Background

The National Toxicology Program (NTP) announces its intent to review additional substances, mixtures and exposure circumstances for possible listing in or delisting (removing) from the Report on Carcinogens, Ninth Edition. This Report (previously known as the Annual Report on Carcinogens) is a Congressionally-mandated listing of known human carcinogens and

reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, (DHHS), shall publish a report which contains a list of all substances (1) which either are known to be human carcinogen or may be reasonably anticipated to be a human carcinogen, and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

The review of the substances, mixtures or exposure circumstances for listing in, changing the current listing from reasonably anticipated to be a human carcinogen to known to be a human carcinogen or delisting from the Ninth Report will involve a multiphased, peer review process involving two Federal scientific review groups and one non-government, scientific peer review body (a subcommittee on the NTP Board of Scientific Counselors) which will meet in an open, public meeting that will provide for public comments. All available data relevant to the criteria for inclusion or removal of candidate agents, substances, mixtures or exposure circumstances in the Report will be evaluated by the three scientific review committees. The criteria to be used in the review process and the detailed description of the review procedures, including the steps in the formal review process, can be obtained by contacting: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–5096, fax: (919) 541–2242, email: jameson@niehs.nih.gov.

## Public Comment Requested

The NTP will be considering 11 substances, mixtures and exposure circumstances in 1998, for either listing in or delisting (removing) from, or changing the current listing from reasonably anticipated to be a human carcinogen to the known to be a human carcinogen category in the Ninth Report. These substances, mixtures, or exposure circumstances are provided in the following table with their chemical Abstracts Services (CAS) Registry numbers (where available) and pending review action. The NTP solicits public input on these 11 substances, mixtures and exposure circumstances and asks for relevant information anyone may have on carcinogenesis from completed, ongoing, or planned studies by others, as well as current production data, use patterns, and human exposure information for any of the substances, mixtures or exposure circumstances listed in this announcement. Comments concerning the review of these substances, mixtures or exposure circumstances for listing in or delisting from the Ninth Report on Carcinogens will be accepted for a period of 45 days from the date of the publication of this announcement in the Federal Register. Comments or questions should be directed to Dr. C. W. Jameson at the address listed above.

## Public Nominations for Delisting or Listing Encouraged

The NTP solicits and encourages the broadest participation from interested individuals or parties in nominating agents, substances, or mixtures for listing in or delisting from the Ninth and future Reports on Carcinogens. Petitions should contain a rationale for listing or delisting. Appropriate background information and relevant data (e.g. Journal articles, NTP Technical Reports, IARC listings, exposure surveys, release inventories, etc.) which support a petition should be provided or referenced when possible.

A detailed description of listing/delisting procedures, including the steps in the formal review process, can be obtained by contacting Dr. Jameson at the address listed above.

Dated: January 26, 1998.

**Kenneth Olden,**

*Director, National Toxicology Program.*

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES TO BE REVIEWED IN 1998, FOR CONSIDERATION OF LISTING IN OR DELISTING FROM THE NINTH REPORT ON CARCINOGENS

| Substance or exposure circumstance/CAS Number | Primary uses or exposures | To be reviewed for |
|---|---|---|
| Alcoholic Beverages | Consumption of alcoholic beverages | Listing in the 9th Report. |
| Boot and Shoe Manufacture and Repair. | Workers in the boot and shoe manufacture and repair industry | Listing in the 9th Report. |
| Diesel Particulates | Diesel engine exhaust | Listing in the 9th Report. |
| Environmental Tobacco Smoke | ''Passive'' inhalation of tobacco smoke from environmental sources | Listing in the 9th Report. |
| Ethyl Acrylate/140–88–5 | Monomer used to produce polymers and copolymers for use in latex paints, textiles, etc. | Delisting from the Report on Carcinogens. |
| Ethylene Oxide/75–2–8 | Industrial chemical used as an intermediate in the manufacture of other chemicals; e.g., ethylene glycol and is widely used in the health care industry as a sterilant. | Change current listing to the Known to be a Human Carcinogen category. |
| Isoprene/78–79–5 | The monomeric unit of natural rubber and naturally occurring terpenes and steroids and widely used in the production of isoprene-butadiene copolymers. | Listing in the 9th Report. |
| Methyl-t-Butyl Ether/1634–04–4 | Used as an additive in unleaded gasoline in amounts up to 11% | Listing in the 9th Report. |
| Nickel and Nickel Compounds/7440–02–0. | Many industrial and commercial applications | Change current listing to the Known to be a Human Carcinogen category. |
| Nickel Refining | Workers in the nickel refining industry | Listing in the 9th Report. |
| Silica, Crystalline/7631–86–9 | Exposure from mining and quarrying of coal and other minerals, stone cutting, production of glass and ceramics and in occupations such as sandblasting, polishing and grinding. | Change current listing to the Known to be a Human Carcinogen category. |

[FR Doc. 98–2563 Filed 2–2–98; 8:45 am]
BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

**PRT–83713**

*Applicant:* Zambrana Engineering, Inc., St. Louis, Missouri; Paul T. Raibley, Senior Aquatic Scientist.

The applicant requests a permit to take (capture and release) pallid sturgeon (*Scaphirhynchus albus*), fanshell [*Cyprogenia stegaria* (=*irrorata*)], fat pocketbook [*Potamilus* (=*Proptera*) *capax*], and Higgins' eye pearlymussel (*Lampsilis higginsi*) from the Mississippi and Ohio Rivers and their tributaries bordering or occurring in Illinois, Indiana, Iowa, Minnesota, Missouri, Ohio, and Wisconsin. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

**PRT–838714**

*Applicant:* University of Minnesota, Raptor Center, St. Paul, Minnesota; Patrick Redig, Director.

The applicant requests a permit to take (capture, fit with radio tracking units, and release) bald eagle (*Haliaeetus leucocephalus*) in Iowa, Minnesota, and Wisconsin. Activities are proposed for the purpose of scientific research aimed at survival and enhancement of the species in the wild.

**PRT–838715**

*Applicant:* The Nature Conservancy, Oak Openings Project Office, Swanton, Ohio; David Weekes, Executive Director.

The applicant requests a permit to take (harass and kill through habitat management) Karner blue butterfly (*Lycaeides melissa samuelis*) at the Kitty Todd Nature Preserve in Swanton, Ohio. Activities are proposed to maintain and increase habitat for a reintroduced population of the species for the purpose of survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5332); FAX: (612/713–5292).

Dated: January 26, 1998.

**Matthias A. Kerschbaum,**

*Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.*

[FR Doc. 98–2522 Filed 2–2–98; 8:45 am]
BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of a Draft Recovery Plan for the Pawnee Montane Skipper (Hesperia leonardus montana) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the pawnee montane skipper (*Hesperia leonardus montana*). The pawnee montane skipper currently exists on 38 square miles in the South Platte River drainage system in Colorado. The Service solicits review and comment from the public on this draft recovery plan.

**DATES:** Comments on the draft recovery plan must be received on or before June 3, 1998 to ensure they receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Partnerships Coordinator, Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Written comments and materials regarding this plan should be sent to the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Bettina Proctor, Partnerships Coordinator (see **ADDRESSES** above), at (303) 236–8155, extension 259.

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measure needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The pawnee montane skipper was listed as threatened on September 25, 1987 (52 FR 36176). The skipper occurs only on the Pikes Peak Granite Formation in the South Platte River drainage system in Colorado involving portions of Jefferson, Douglas, Teller, and Park counties. The total known habitat within the range is estimated to be 37.9 square miles.

At the time of listing, the skipper habitat was threatened with the construction of Two Forks Dam and Reservoir by the Denver Water Department, and associated development. In 1990, the U.S. Environmental Protection Agency did not approve the construction of the dam, removing the immediate principal threat to the skipper's habitat. In the long term, plans to develop a reservoir in the South Platte drainage which might negatively affect skipper habitat may resurface.

Because of the limited habitat and range of the Pawnee montane skipper, unexpected environmental, random (stochastic) events could also have a major deleterious effect on the

population. Population biologists (Ehrlich and Murphy 1982) assert that random population changes due to stochastic events are more likely to cause the loss of small populations than are genetic changes.

Recovery Objectives: To protect and maintain through proper vegetation management, all of the defined skipper habitat on public land in the South Platte River drainage so that fragmentation of habitat is avoided and skippers are distributed throughout the range.

Recovery efforts will concentrate on creation of Memoranda of Understanding between land management agencies to provide for maintenance and enhancement of habitat; monitoring skipper presence; monitoring skipper habitat quality and trends, determination of management criteria for habitat maintenance; and education of private landowners and seeking opportunities for conservation agreements to allow enhancement of skipper habitat on private lands.

### Public Comments Solicited

The Service solicits written comments on the recovery plan described above. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the recovery plan.

### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 21, 1998.

**Terry Terrell,**

*Deputy Regional Director, Denver, Colorado.*

[FR Doc. 98–2159 Filed 2–2–98; 8:45 am]

**BILLING CODE 4310–55–M**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## North American Wetlands Conservation Act: Request for Small Grants Proposals for 1998

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of request for proposals.

**SUMMARY:** The purpose of this notice is to advise the public that the U.S. Fish and Wildlife Service (Service) is currently entertaining proposals that request match funding for wetland conservation projects under the Small Grants Program. Projects must meet the purposes of the North American Wetlands Conservation Act of 1989, as amended. Funding priority will be given to projects from new grant applications with new partners, where the project ensures long-term conservation benefits.

**DATES:** Proposals must be postmarked no later than Friday, May 1, 1998.

**ADDRESSES:** Proposals should be addressed to: North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, Virginia 22203, Attn: Small Grants Coordinator.

**FOR FURTHER INFORMATION CONTACT:** Dr. Keith A. Morehouse, Small Grants Coordinator, or Ms. Pat Bond, Secretary, North American Waterfowl and Wetlands Office, 703/358–1784; facsimile 703/358–2282.

**SUPPLEMENTARY INFORMATION:** The purpose of the 1989 North American Wetlands Conservation Act (NAWCA), as amended, is to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat through partnerships. Principal conservation actions supported by NAWCA are acquisition, creation, enhancement and restoration of wetlands and wetlands-associated habitat.

In 1996 and 1997, the North American Wetlands Conservation Council (Council) initiated a pilot Small Grants program with an allocation of $250,000 per year. The objective was to promote long-term wetlands conservation activities through encouraging participation by new grantees and partners who may not otherwise be able to complete in the regular grants program. It was also hoped that successful participants in the Small Grants program would be encouraged to participate in the NAWCA-based Regular Grants program. Over the first two years, about 220 proposals requesting a total of approximately $6.4 million competed for funding. Ultimately, 19 projects were funded. For 1998, with the approval of the Migratory Bird Conservation Commission, the Council has made the Small Grants program operational with a $500,000 allocation.

To be considered for funding in 1998, proposals must have a grant request no greater than $50,000. All wetland conservation proposals with be accepted that meet the requirements of the Act. However, funding priority will be given to projects from new grant applicants (individuals or organizations who have never received a NAWCA grant) with new partners, where the project ensures long-term conservation benefits.

In addition, proposals must represent on-the-ground projects, and any overhead in the project budget may be no greater than 10 percent of the grant amount. The anticipated magnitude of wetlands and wildlife resources benefits that will result from project execution is an important factor to be considered in proposal evaluation, and there should be a reasonable balance between acreages of wetlands and wetland-associated uplands.

Please keep in mind that NAWCA and matching funds may only be used for wetlands acquisition, creation, enhancement, and/or restoration, they may not be used for signage, displays, trails or other education features, materials and equipment, even though the goal of the project may ultimately be to support wetland conservation education curricula. Projects oriented toward education are not ordinarily eligible for NAWCA funding because education is not a primary purpose of the Act. However, useful project outcomes can include educational benefits resulting from conservation actions. Research is also not a primary purpose of the Act, and research proposals will not be considered for funding.

Even though requiring less total information than those submitted for the regular grants program, Small Grant proposals must still be clearly explained and meet the basic purposes given above and the 1:1 or greater non-Federal matching requirements of the NAWCA. Small Grants projects must also be consistent with Council guidelines, objectives and policies. All non-Federal matching funds and proposed expenditures of grant funds must be consistent with Appendix A of the Small Grants instructions, ''Eligibility Requirements for Match of NAWCA Grant and Non-Federal Funds.''

Small Grants proposals may be submitted at any time prior to the due date but must be postmarked no later than Friday, May 1, 1998. Address submitted proposals as follows: North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, VA 22203, Attn: Small Grants Coordinator.

It is essential that grant request packages be complete when they are received in the North American Waterfowl and Wetlands Office, including all of the documentation of partners (partner letters) with funding pledge amounts. Information of funding in partner letters, i.e., amounts and description regarding use, must correspond with budget amounts in the

budget table and any figures provided in the narrative.

With the volume of proposals received, it is expected that the NAWWO will not be able to contact proposal sources to verify and/or request supplement data and/or materials. Thus, those proposals lacking required information or containing conflicting information will not be considered for funding.

For more information, and to request the Small Grants instructional booklet, call (703) 358–1784, facsimile (703) 358–2282, or send e-mail to R9ARW__NAWWO@MAIL.FWS.GOV. Contact the Small Grants Coordinator, Dr. Keith A. Morehouse, if you would like to receive the instructions booklet e-mail or on a computer disk.

In conclusion, the Service requires that upon their arrival in the NAWWO, proposal packages must be complete with regard to all of the information requested, in the format requested, and on time.

Dated: December 19, 1997.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 98–2581 Filed 2–2–98; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–066–1310–03]**

### Amendment to Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Natural Gas Development in Carbon and Emery Counties, Utah

**AGENCY:** Bureau of Land Management, Utah.

**ACTION:** Amendment to Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Natural Gas Development in Carbon and Emery Counties, Utah.

**SUMMARY:** Pursuant to Section 102(2)(G)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Price Field Office is directing the preparation of an EIS by a third-party contractor on the impacts of proposed natural gas development on public, National Forest, State and private lands in Carbon and Emery Counties in central Utah. The U.S. Forest Service, Manti-La Sal National Forest, is participating in EIS preparation as a cooperating agency in accordance with Title 40, Code of Federal Regulations, § 1501.6.

**SUPPLEMENTARY INFORMATION:** Development of natural gas in the Castle Valley area is proposed by Anadarko Petroleum Corporation, Chandler and Associates, Inc., Questar Pipeline Company and Texaco Exploration and Production, Inc. The BLM is preparing an EIS to analyze a conceptual natural gas development model based on the companies' proposals. Subsequent to initial scoping for the EIS, the project area boundary was adjusted to include a small portion of National Forest System Lands. The U.S. Forest Service was invited to participate as a cooperating agency to provide information regarding direct impacts of proposed wells on National Forest System Lands and information needed to address potential project-related cumulative effects adjacent to Forest lands and resources. Additionally, The Forest Service will make a NEPA decision dealing with activities on National Forest System lands.

**Description of the Proposed Action**

Field development of existing Federal leases within an area of approximately 111,000 acres in the Castle Valley area of Carbon and Emery Counties, Utah, is proposed. The project would involve 375 wells with related facilities including roads, pipelines, power lines compressor stations, and water disposal facilities. Up to 10 of these wells may be on National Forest System lands. The BLM and USFS also propose to approve development of natural gas within the project area and approve individual drilling applications, right of way authorizations and special use permits. The BLM and USFS propose to make independent NEPA decisions for activities on lands under their respective jurisdictions.

**Alternatives**

The EIS will analyze the Proposed Action, a No-Action Alternative, An Environmental Protection Measure Alternative, and a Wildlife Corridor Protection Alternative.

**Other Relevant Information**

To accommodate existing Federal leases in the area and help define the project area ecologically, the western border of the south project area in Emery County was adjusted to primarily follow the 8000-foot contour line. This boundary shift incorporated approximately 10,000 acres of National Forest System Lands. The BLM and USFS will prepare separate Record of Decision for respective portions of the EIS.

Additional information, including maps, a scoping summary and a list of issues developed through the scoping process are included in the Ferron Natural Gas EIS Homepage located at: *blm.gov/utah/minerals/ferron.html*

The project schedule is as follows:

File Draft EIS—May 1998
File Final EIS—November 1998
Record of Decision—December 1998

**Public Input**

Three public scoping meetings were held in February 1997 to receive oral comments. Comments received from the public were included in development of EIS issues and alternatives. The BLM and USFS determined that inclusion of National Forest System Lands did not change the scope of the proposal.

**ADDRESSES:** Any comments should be sent to George Diwachak, Team Leader, Ferron Natural Gas EIS, Bureau of Land Management, P.O. Box 45155, Salt Lake City, UT, 84145–0155.

**FOR FURTHER INFORMATION CONTACT:** George Diwachak, (801) 538–4043.

Dated: January 26, 1998.

**G. William Lamb,**

*State Director.*

[FR Doc. 98–2564 Filed 2–2–98; 8:45 am]

BILLING CODE 4310–DQ–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–932–2810–00; GP8–0091]**

### Fire Management Activities: Oregon and Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to review and modify fire management plans, as necessary, and to conduct associated public participation.

**SUMMARY:** The Bureau of Land Management (BLM) in Oregon (Burns, Coos Bay, Eugene, Lakeview, Medford, Prineville, Roseburg, Salem, and Vale Districts) and Washington (Spokane District) are reviewing their fire management activities on all of the BLM-administered public lands in Oregon and Washington. New fire management plans for all BLM districts must be completed in Fiscal Year 1998. The initial phase for completing these plans will address fire management direction based on existing land management plans, and will be available for public review by early February at the BLM offices indicated below. Other possible public involvement activities may include open houses, workshops, and/or field trips if there is sufficient interest.

**EFFECTIVE DATE:** Meeting dates and other public participation activities in BLM

districts will be announced in other public notices, the local media, and in letters sent to interested and potentially affected parties. Comments will be accepted throughout the process of modifying the fire management plans. Interested persons may request to be added to the mailing lists by contacting the applicable district offices. Portions of the fire management plans and/or related documents may be available in an electronic format; and some of the documents may also be available on BLM electronic Internet ''web sites.'' Interested individuals should contact the individual district offices to determine the availability of planning documents and reports in local libraries or in electronic formats.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS, CONTACT ANY OF THE FOLLOWING:**

*Burns District:* Michael Green, District Manager, Bureau of Land Management, HC 74–12533 Hwy 20 West, Hines, OR 97738, (541) 573–4400

*Coos Bay District:* Neil Middlebrook, Acting Assoc. District Manager, Bureau of Land Management, 1300 Airport Lane, North Bend, OR 97459, (541) 756–0100

*Eugene District:* Denis Williamson, District Manager, Bureau of Land Management, 2890 Chad Drive, P.O. Box 10226, Eugene, OR 97440, (541) 683–6600

*Lakeview District:* Steve Ellis, District Manager, Bureau of Land Management, P.O. Box 151, Lakeview, OR 97630, (541) 947–2177

*Klamath Falls Resource Area:* Barron Bail, Area Manager, Bureau of Land Management, 2795 Anderson Avenue, Bldg. 25, Klamath Falls, OR 97603, (541) 883–6916

*Medford District:* Van Manning, Acting District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, OR 97504, (541) 770–2200

*Oregon State Office:* William Bradley, Deputy State Director for Resource Planning, Use, and Protection, Bureau of Land Management, 1515 SW 5th Avenue, P.O. Box 2965, Portland, OR 97208, (503) 952–6056

*Prineville District:* James Hancock, District Manager, Bureau of Land Management, 3050 NE 3rd, P.O. Box 550, Prineville, OR 97754, (541) 416–6700

*Roseburg District:* Cary Osterhaus, District Manager, Bureau of Land Management, 777 NW Garden Valley Blvd., Roseburg, OR 97470, (541) 440–4930

*Salem District:* Mark Lawrence, Assoc. District Manager, Bureau of Land Management, 1717 Fabry Road, SE, Salem, OR 97306, (503) 375–5646

*Tillamook Resource Area:* Dana Shuford, Area Manager, Bureau of Land Management, 4610 Third Street, Tillamook, OR 97141, (541) 815–1100

*Spokane District:* Joe Buesing, District Manager, Bureau of Land Management, 1103 North Fancher Road, Spokane, WA 99212–1200, (509) 536–1200

*Wenatchee Resource Area:* James Fisher, Area Manager, Bureau of Land Management, 915 North Walla Walla Street, Wenatchee, WA 98801–1521, (509) 665–2100

*Vale District:* Ed Singleton, District Manager, Bureau of Land Management, 100 Oregon Street, Vale, OR 97918, (541) 473–3144

*Baker Resource Area:* Penelope Dunn, Area Manager, Bureau of Land Management, 1550 Dewey Avenue, Room 215, Baker City, OR 97814, (541) 523–1256

**SUPPLEMENTARY INFORMATION:** The Federal Wildland Fire Policy and Program Review (1995) directs federal land managers to develop fire management plans for every area with burnable vegetation. The BLM in Oregon and Washington currently has such plans for each district. However, the BLM is reviewing and revising district fire management plans in 1998, and this is an opportunity to ensure that wildland fire management decisions are based on Land and Resource Management Plans. New fire management plans must be developed in Fiscal Year 1998.

The Federal Wildland Fire Policy and Program Review (1995) reaffirms the protection of human life as the first priority in wildland fire management. Property and natural/cultural resources are jointly the second priority, with protection decisions based on values to be protected and other considerations. The Federal Wildland Fire Policy and Program Review (1995) also stresses the need to reintroduce wildland fire into the ecosystem. The planning review will identify any need for additional fuels management prescriptions and/or changes to overall fire suppression strategies, as appropriate under existing approved land management plans. Some goals of the planning review are to identify fire management strategies to achieve desired resource conditions, reduce the potential for catastrophic wildfires through the management of fuels, and achieve a better understanding of fire's role in the natural environment.

The initial phase of fire management plan revisions will focus on the following proposed management categories for fire management within each planning unit:

—Wildland fire is not desired at all.

—Unplanned wildland fire is likely to cause negative effects, but these effects may be mitigated through fuels management, including prescribed fire.

—Fire is desired, but there are constraints because of the existing vegetation condition due to fire exclusion.

—Fire is desired, and there are no constraints associated with resource condition or social, economic, or political considerations.

These management categories will be based on considerations including: protection of human life, protection of property and natural/cultural resources, reintroduction of fire into ecosystems, reducing the cost of fire suppression, integration of fire and resource management strategies, air quality, recreation, watershed management, livestock grazing, visual resources, and wildlife habitat.

Dated: January 22, 1998.

**William L. Bradley,**

*Deputy State Director, Oregon/Washington.*

[FR Doc. 98–2520 Filed 2–2–98; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–030–08–1220–00: GP8–0095]**

### Notice of Meeting of Sub-Committee of the Oregon Trail Interpretive Center, Advisory Board

**AGENCY:** National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** A subcommittee of the Advisory Board for the National Historic Oregon Trail Interpretive Center has been formed to review BLM's draft strategic plan and to make recommendations for an action plan to accomplish broad goals and objectives of enhancing the Interpretive Center. These recommendations will be consolidated with other Advisory Board recommendations to be presented to the BLM's Vale District Manager. This subcommittee will meet at 7:00 a.m. at the Best Western Sunridge Inn, Baker City, Oregon, on February 12, at 7:00 a.m. on February 19, and at 7:00 a.m. on February 26, 1998.

**DATES:** The meetings will begin at 7:00 a.m. on February 12; at 7:00 a.m. on

February 19; and at 7:00 a.m. on February 26, 1998.

**ADDRESSES:** The meetings will take place at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon.

**FOR FURTHER INFORMATION CONTACT:** David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, PO Box 987, Baker City OR 97814, (Telephone 541–523–1845).

**Edwin J. Singleton,**

*Vale District Manager.*

[FR Doc. 98–2521 Filed 2–2–98; 8:45 am]

**BILLING CODE 4310–33–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–030–08–1010–00–1784]**

### Southwest Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice; Resource Advisory Council Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet on Thursday, February 12, 1998, in Montrose, Colorado.

The original submission of this notice, dated January 9, 1998, was lost in the mail and never received by the Office of the Federal Register. Therefore, this notice does not meet the minimum 15 day notification required by the Code of Federal Regulations at Title 41, Part 101–61015(b)(1), but is allowed under Title 41, Part 101–6.1015(b)(2).

**DATES:** The meeting will be held on Thursday, February 12, 1998.

**ADDRESSES:** For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov

**SUPPLEMENTARY INFORMATION:** The February 12, 1998, meeting will begin at 9:00 a.m. in BLM's Montrose District Office Conference Room, 2465 South Townsend, Montrose, Colorado. The agenda will focus on recreation guidelines and implementation of BLM Colorado's standards for public land health and guidelines for livestock grazing. Time will be provided for public comments.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo—sw—rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: January 29, 1998.

**Mark W. Stiles,**

*District Manager.*

[FR Doc. 98–2676 Filed 2–2–98; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–952–08–1420–00]**

### Notice of Filing of Plat of Survey; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey described below will be officially filed in the New Mexico Office, Bureau of Land Management, Santa Fe, New Mexico, on February 26, 1998.

**6th Principal Meridian, Kansas**

Tp. 35 S., R. 43 W., accepted January 23, 1998 for Group 25 Kansas; and Resurvey of the State Boundary between Kansas and Oklahoma, accepted January 23, 1998, for Group 25 Kansas.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 for inspection, until officially filed. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: January 26, 1998.

**John P. Bennett,**

*Chief Cadastral Surveyor for New Mexico.*

[FR Doc. 98–2618 Filed 2–2–98; 8:45 am]

**BILLING CODE 4310–FB–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Concession Contract Negotiations; Gateway National Recreation Area, NY; Jamaica Bay District

**AGENCY:** National Park Service, Interior.

**ACTION:** Public Notice.

**SUMMARY:** Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing the operation of a sports center complex for the public within the Jamaica Bay District of Gateway National Recreation Area.

**EFFECTIVE DATE:** May 4, 1998 .

**ADDRESSES:** Interested parties should contact National Park Service, Boston Support Office, Concession Management Program, 15 State Street, Boston, MA 02109–3572 ATTN: Lynne Koser, Telephone (617) 223–5209, to obtain a copy of the prospectus describing the requirements of the proposed contract.

**SUPPLEMENTARY INFORMATION:** This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

There is no existing concessioner. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be received by the National Park Service, Boston Support Office, Concession Management Program, 15 State Street, Boston, Massachusetts 02109–3572, not later than the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Dated: January 16, 1998.

**Chrysandra L. Walter,**

*Acting Regional Director, Northeast Region.*

[FR Doc. 98–2579 Filed 2–2–98; 8:45 am]

**BILLING CODE 4310–70–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Availability of Procedures and Guidance for Filming and Photography in Units of the National Park Service

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** The National Park Service (NPS) has available for public review, the proposed guidance and procedures document for commercial Filming and Photography in units of the NPS. This information was developed to provide guidance and procedures to all units of the National Park System who deal with requests for commercial filming and photography, including motion pictures, videos and still photography. At the end of the review period, this material will appear in the NPS Guideline for Special Park Uses distributed to all NPS units. This document will provide guidance to park managers concerning all aspects of requests for commercial filming and photography in the National Park System, from the initial contact, through on-location protection of resources, and ending with complete recovery and restoration of the site. This document will replace the existing NPS Guideline, NPS–21, and is an in-depth treatment of the subject.

Copies of the proposed guidance document will be made available upon request by writing: Dennis Burnett, National Park Service, Ranger Activity Division, 1849 C St. NW, Suite 7408, Washington, DC 20240, or by calling 202–208–4874.

**DATES:** Written comments will be accepted through April 6, 1998.

**ADDRESSES:** Comments should be addressed to: Dick Young, Special Park Uses Program Manager, C/O Colonial NHP, P. O. Box 210, Yorktown, VA 23690.

**FOR FURTHER INFORMATION CONTACT:** Dick Young at 757–898–7846, or 757-898–3400, ext. 51.

Dated: January 27, 1998.

**Chris Andress,**

*Chief, Ranger Activities Division.*

[FR Doc. 98–2580 Filed 2–2–98; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–97–48]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Notice of Alleged Safety and Health Hazards, OSHA–7 Form

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed reinstatement of the information collection requirement contained in 29 CFR 1903.11. The Agency is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Written comments must be submitted on or before April 6, 1998.

**ADDRESSEE:** Comments are to be submitted to the Docket Office, Docket No. ICR–97–48, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7894, Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

**FOR FURTHER INFORMATION CONTACT:** Renee Carter, Directorate of Compliance Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3107, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 219–8041. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Renee Carter at (202) 219–8041, x109, or Barbara Bielaski at (202) 219–8076, ext. 142.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Occupational Safety and Health Act of 1970 (OSH Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enhancement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The OSHA–7 Form can be used by an employee or employee representative to notify OSHA if he or she believes that there is a violation of a safety or health standard or if imminent danger to an employee exists. OSHA uses the information on the form to determine if there are reasonable grounds to believe that a violation or danger exists and to determine appropriate agency action. The form is also used to provide an employer with a copy of any complaints as required by the OSH Act, and to provide local magistrates with evidence of just cause for obtaining a warrant for those cases in which an employer has not allowed OSHA to investigate a complaint.

#### II. Current Actions

This notice requests a reinstatement of the current Office of Management and Budget (OMB) approval of the Notice of Alleged Safety and Health Hazards, OSHA–7 Form (formerly OMB Number 1218–0064).

*Type of Review:* Reinstatement.

*Agency:* U.S. Department of Labor, Occupational Safety and Health Administration.

*Title:* Notice of Alleged Safety and Health Hazards, OSHA–7 Form.

*OMB Number:* 1218–0NEW (formerly 1218–0064).

*Agency Number:* Docket Number ICR–97–48.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Average Time Per Response:* 25 minutes (.42 hour) for complaints received via fax or letter. 15 minutes (.25 hour) for complaints received orally via telephone.

*Estimated Total Burden Hours:* 8,155.

*Total Annualized Capital/Startup Costs:* $0.

Signed at Washington, DC, this 27th day of January 1998.

**John B. Miles, Jr.,**

*Director, Directorate of Compliance Programs.*

[FR Doc. 98–2611 Filed 2–2–98; 8:45 am]

BILLING CODE 4510–26–M

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of February 2, 9, 16, and 23, 1998.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of February 2*

Wednesday, February 4

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

*Week of February 9—Tentative*

There are no meetings the week of February 9.

*Week of February 16—Tentative*

Wednesday, February 18

2:00 p.m.—Briefing on Investigative Matters (Closed—Ex. 5 & 7).

Thursday, February 19

9:30 a.m.—Meeting with Northeast Nuclear on Millstone (PUBLIC MEETING) (Contact: Bill Travers, 301–415–1200)

12:00 m.—Affirmation Session (PUBLIC MEETING) (if needed)

*Week of February 23—Tentative*

There are no meetings the week of February 23.

* The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (RECORDING)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

**William M. Hill, Jr.,**

*Secy, Tracking Officer, Office of the Secretary.*

[FR Doc. 98–2750 Filed 1–30–98; 2:30 pm]

BILLING CODE 7590–01–M

## PENSION BENEFIT GUARANTY CORPORATION

### Pendency of Request for Approval of Special Withdrawal Liability Rules; International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of pendency of request.

**SUMMARY:** This notice advises interested persons that the Pension Benefit Guaranty Corporation (''PBGC'') has received a request from the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan for approval of a plan amendment modifying special withdrawal liability rules, which rules were approved by PBGC on January 30, 1984. See Approval of Special Withdrawal Liability Rules (''Notice of Approval'') 49 FR 6043 (February 16, 1984). Under section 4203(f) of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), PBGC may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules. PBGC has prescribed such regulations at 29 CFR Part 4203. The regulations provide that PBGC approval is required for a plan amendment establishing special withdrawal liability rules, as well as any subsequent modification of a previously approved plan amendment, other than repeal of the amendment. The effect of this notice is to advise interested persons of this request for approval of a modification to special withdrawal liability rules and to invite interested persons to submit written comments on it.

**DATES:** Comments must be submitted on or before March 20, 1998.

**ADDRESSES:** All written comments (at least three copies) should be addressed to: Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005–4026, or hand-delivered to Suite 340 at the above address. The complete request for approval and any comments will be available for public inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at PBGC's Communications and Public Affairs Department, Suite 240, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Gennice D. Brickhouse, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005–4026; Telephone 202–326–4020. (For TTY and TDD, call the Federal relay service at 1–800–877–8339 and ask to be connected to 202–326–4020).

**SUPPLEMENTARY INFORMATION:**

#### Background

Under section 4203(a) of ERISA, a complete withdrawal from a multiemployer plan occurs, generally, when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under section 4205 of ERISA, a partial withdrawal occurs, generally, when an employer: (1) Reduces its contribution base units by seventy percent in each of three consecutive years; or, (2) permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan, while continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location; or, (3) permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased. Although the general rules on complete

and partial withdrawal identify events that normally result in a loss to the plan's contribution base, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute does not normally weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

For construction industry plans and employers, section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan, and the employer either continues to perform previously covered work in the jurisdiction of the collective bargaining agreement or resumes such work within five years without renewing the obligation to contribute at the time of resumption. Section 4203(c)(1) of ERISA applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. In contrast, the general definition of complete withdrawal in section 4203(a) of ERISA defines a withdrawal to include permanent cessation of the obligation to contribute regardless of the continued activities of the withdrawn employer.

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. Under section 4208(d)(1) of ERISA, ''[a]n employer to whom section 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.'' Under section 4208(d)(2) of ERISA, ''[a]n employer to whom section 4203(c) (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the [PBGC] by regulation.''

Section 4203(f) of ERISA provides that PBGC may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in section 4203(b) and (c) of ERISA for the construction and entertainment industries. Section 4203(f)(2) of ERISA provides that such regulations shall permit the use of special withdrawal liability rules only in industries (or portions thereof) in which PBGC determines that the characteristics that would make use of such rules appropriate are clearly shown, and in each instance, the use of such rules will not pose a significant risk to the insurance system under Title IV of ERISA. Section 4208(e)(3) of ERISA provides that PBGC shall prescribe by regulation a procedure by which a plan may by amendment adopt special partial withdrawal liability upon a finding by PBGC that the adoption of such rules are consistent with the purposes of Title IV of ERISA.

A PBGC regulation, Extension of Special Withdrawal Liability Rules (29 CFR Part 4203), prescribes procedures whereby a multiemployer plan may, pursuant to sections 4203(f) and 4208(e)(3) of ERISA, request PBGC to approve a plan amendment that establishes special complete or partial withdrawal liability rules. Under 29 CFR 4203.3(a), a complete withdrawal rule adopted pursuant to Part 4203 must be similar to the rules for the construction and entertainment industries described in section 4203(b) and (c) of ERISA. A partial withdrawal liability rule adopted pursuant to Part 4203 must be consistent with the complete withdrawal rule adopted by the plan. Pursuant to 29 CFR 4203.3(b), a plan amendment adopted pursuant to Part 4203 may cover an entire industry or industries, or may be limited to a segment of an industry, and may apply to cessations of the obligation to contribute that occurred prior to the adoption of the amendment.

Each request for approval of a plan amendment establishing special withdrawal liability rules must contain the information specified in 29 CFR 4203.4(d). In acting on such a request, 29 CFR 4203.5(a) provides that PBGC shall approve a plan amendment establishing special withdrawal liability rules if PBGC determines that the plan amendment—

(1) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate; and

(2) Will not pose a significant risk to the insurance system.

In making these determinations, PBGC will conduct a comprehensive analysis of the request, the actuarial data submitted and other relevant information relating to the industry and the plan. 29 CFR 4203.4. Under 29 CFR 4203.4(d)(7), the plan must provide information on the effects of the withdrawals on the plan's contribution base, as well as information sufficient to demonstrate the existence of industry characteristics that would indicate that withdrawals in the industry do not typically have an adverse effect on the plan's contribution base. (These characteristics include the mobility of the employees, the intermittent nature of the employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.) 29 CFR 4203.4(d)(7).

Finally, 29 CFR 4203.5(b) requires PBGC to publish a notice of the pendency of a request for approval of a plan amendment containing all the information required under 29 CFR 4203.4(d) in the **Federal Register**, and to provide interested parties with an opportunity to comment on the request.

**Request**

PBGC has received a request from the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan (''Plan'') for approval of a modification to a plan amendment providing for special withdrawal liability rules, which rules were approved by PBGC on January 30, 1984 (Notice of Approval, 49 FR 6043 (1984)), pursuant to section 4203(f) of ERISA and 29 CFR Part 4203. Pertinent information provided by the Plan is summarized below.

**Applicant**

The Plan is a multiemployer plan, with 114 employers contributing in 1996, maintained pursuant to collective bargaining agreements between the International Longshoremen's & Warehousemen's Union (''ILWU'') and the Pacific Maritime Association (''PMA''). The Plan, which is located in San Francisco, covers the loading and unloading of all dry cargo for ocean-going vessels arriving at or departing from ports along the Pacific coast of the United States, including all ports in the states of California, Oregon and Washington. The only cargoes not covered by the Plan are petroleum products and other liquid cargoes and certain cargoes handled by inland boatmen.

**Employer Association**

The PMA is an employer association whose principal business is to negotiate and administer maritime labor agreements with ILWU. The PMA is composed of American and foreign flag vessel operators, and stevedore and

terminal companies that operate in California, Oregon and Washington ports.

**Plan**

As of June 30, 1996, the Plan covered 8,185 active workers, was paying benefits to 9,049 pensioners and survivors, and had 87 inactive participants (or survivors) with vested entitlements. As of June 30, 1997, the market value of Plan assets was approximately $1.631 billion and the present value of vested liabilities was approximately $1.640 billion. For the Plan year ending June 30, 1995, the Plan received $99.7 million in contributions, and paid out $95 million in benefits and $1.9 million in operating expenses. As of June 30, 1996, Plan assets were more than 13 times total Plan disbursements during the July 1, 1995—June 30, 1996 plan year.

Plan benefit levels are set in negotiations between the PMA and the ILWU. Contribution rates to the Plan, which are on the basis of man-hours, are determined annually, solely by the PMA. Only the stevedoring firms, which are the direct employer of covered employees, contribute to the Plan.

The total number of contributing employers has remained relatively stable since 1971. There were 110 contributors in 1972, 107 in 1979, and 114 in 1996. Forty-two percent of the 1996 contributors were not contributors in 1979, and nearly 40 percent of the 1979 contributors were no longer contributing by 1996.

**Special Characteristics of the Plan**

Since 1938, the Pacific coast has been certified by the National Labor Relations Board as a single bargaining unit, with the ILWU certified as the exclusive bargaining representative. Every Pacific coast port is under the jurisdiction of the ILWU-PMA Pension Agreement requiring contributions to the Plan for covered work. The Plan states in its request that, because of this characteristic, ''the [Plan] is dependent on the vitality of the west coast shipping industry as a whole, and not upon the continued existence of any given employer.''

According to the Plan's request, over the past four decades the west coast shipping industry has grown steadily and it looks forward to increased growth in the future. Total dry cargo at all covered ports amounted to 29 million tons in 1960, 114 million tons in 1980, 182 millions tons in 1990 and 216 million tons in 1996. Because of dramatic productivity gains, this increased shipping activity did not result in increased manpower utilization. For a time, the industry did not require new workers to replace those retiring from the work force. This accounts for the current high ratio of retirees to active employees covered by the Plan. However, the gains in productivity and the consequent drop in unit labor costs did make it possible to increase wages, contribution rates and total contributions during a period in which the utilization of labor decreased.

It now appears that productively gains alone can no longer keep pace with the increase in shipping activity. Covered man-hours have remained relatively consistent with prior periods from less than 16 million in 1975 to more than 18 million in 1980. However, with the recent growth in trade, covered man-hours have increased from as few as 15.6 million in 1993 to over 18 million in 1996.

**Industry Characteristics**

Work covered under the Plan is dependent on the comings and goings of ocean-going vessels at west coast ports. The work done by a covered stevedoring company may fluctuate drastically from month to month as well as from year to year. A particular company obtains its work force through a dispatch hall system, which is jointly maintained by the ILWU and the PMA, and in one week the employer may need a workforce large enough to unload five ships, and then have no ships to unload the next week. Under the dispatch hall system, employees may be shifted daily from company to company based upon shifting work requirements. On the average, a covered longshoreman worked for more than five stevedoring companies in 1996.

Wages are paid to workers not by the individual employers directly, but rather by the PMA, which maintains a coast-wide, computerized payroll system. The stevedoring company remits wages and funds for benefits to the PMA, which in turn issues weekly payroll checks to all ILWU members and transmits contributions to the various benefit funds.

The work of loading and unloading ocean-going vessels must be performed where they call. So long as west coast shipping continues, the work covered by the Plan will continue to be performed.

The Plan stated in its summary that its situation is one where neither the special rules nor the proposed modification imposes any risk to the multiemployer insurance program. The Plan states in its request that ''[Plan] contributions are made with respect to all west coast cargo. The [Plan] is dependent, therefore, only on the continued activity in the west coast shipping industry as a whole. This industry has shown tremendous growth over the past decades, and the growth is projected to continue. For those reasons, the [Plan's] contribution base share is secure, and employers that go out of business on the west coast will not pose a risk to the [Plan] or the PBGC.''

**Actuarial Data**

As part of its request, the Plan submitted copies of its six most recent actuarial valuation reports. Plan costs for funding purposes are determined on the entry age normal, level dollar method. Benefits are subject to collective bargaining, and contributions are allocated among contributing employers on the basis of the ERISA minimum funding requirements.

The reports show that during the 6-year period spanned by the reports (7/1/91–6/30/97), the Plan population was relatively stable. During that period, the number of retirees decreased 1.8 percent, while the number of active participants decreased 3.4 percent. However, during this same period, tonnage handled increased nearly 20 percent. And, as of the end of the June 30, 1996 Plan year, annual contributions had increased from $71.1 million to $99.7 million, and Plan assets rose from $747.0 million to $1.329 billion.

There were three benefit increases under the Plan during the period covered by the reports. The first, effective July 1, 1992, increased the unfunded accrued liability by $49 million. The second increase, effective July 1, 1993, increased the unfunded accrued liability by $500 million. Finally, the third increase, effective July 1, 1996, increased the unfunded accrued liability by $52 million. Specifically, the Plan's monthly accrual rate for each year of service went from $37 to $70. PBGC notes that the Plan's benefit level exceeds the maximum benefit guaranteed by PBGC under section 4022A(c) of ERISA, which is $16.25 per month per year of service.

From 1991–1995, contributions increased at a faster rate than benefit payouts. In 1991, benefit payouts were 97% of contributions, and in 1995, they were 95% of contributions.

A summary of the six actuarial valuations is set forth below.

SUMMARY OF ACTUARIAL VALUATION RESULTS [1]

| | Valuation date | | | | | |
|---|---|---|---|---|---|---|
| | 7/1/96 | 7/1/95 | 7/1/94 | 7/1/93 | 7/1/92 | 7/1/91 |
| No. of active participants | 8,185 | 7,896 | 7,682 | 8,141 | 8,339 | 8,469 |
| No. of retired participants | 9,049 | 9,236 | 9,244 | 8,979 | 9,132 | 9,214 |
| Monthly benefit accrual rate | 70 | 69 | 69 | 69 | 39 | 37 |
| Max. monthly benefit | 2,450 | 2,415 | 2,415 | 2,415 | 1,365 | 1,295 |
| Contributions (000) | N/A | 99,696 | 99,023 | 87,316 | 74,139 | 71,074 |
| Benefits (000) | N/A | 94,963 | 92,437 | 85,293 | 71,321 | 68,848 |
| Market value assets (000) | 1,329,082 | 1,143,335 | 957,661 | 950,030 | 835,063 | 746,993 |
| Net min. funding charges w/o credit bal (000) | 79,154 | 85,787 | 81,247 | 80,034 | 47,307 | 43,987 |
| Normal cost (000) | 20,527 | 19,176 | 18,441 | 19,162 | 12,821 | 12,334 |
| Unfunded accrued liab. (000) | 534,416 | 637,646 | 710,802 | 664,096 | 341,037 | 360,009 |
| Unfunded liab.—vested benefits (000) | 354,821 | 462,132 | 530,092 | 476,168 | N/A | N/A |
| Valuation interest rate | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 | 6.5 |

[1] Taken from actuarial reports submitted with request.

**Approved Special Rules**

The complete text of the Plan provisions containing the approved special withdrawal liability rules is set forth in the Notice of Approval, 49 FR 6043 (1984). Interested persons may obtain a copy of that notice by contacting PBGC. Following is a summary of the special withdrawal liability rules in effect and the text of the proposed modification to those rules.

Under the special rules, a complete withdrawal occurs if an employer who makes contributions to the Plan for longshore work permanently ceases to have an obligation to make contributions to the Plan, and the employer: (1) Continues to perform work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States, (2) resumes such work at any time during the Plan year in which the contribution obligation ceased through the end of the fifth succeeding Plan year without renewing the contribution obligation, (3) sells or otherwise transfers a substantial portion of its business or assets to another person that performs longshore work without having an obligation to make contributions to the Plan under the collective bargaining agreements under which the Plan is maintained, or (4) ceases to have an obligation to contribute in connection with the withdrawal of every employer from the Plan or substantially all of the employers within the meaning of section 4219(c)(1)(D) of ERISA. A partial withdrawal occurs if an employer incurs a partial withdrawal within the meaning of section 4205 of ERISA and, in addition, at any time from the date of the partial withdrawal through the succeeding five plan years, the employer: (1) Performs work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States without having an obligation to contribute to the Plan for such work, or (2) sells or otherwise transfers a substantial portion of its business or assets to another person that performs longshore work without having an obligation to make contributions to the Plan under the collective bargaining agreements under which the Plan is maintained.

The amendment adopting the special withdrawal liability rules also added funding requirements to the ILWU–PMA Pension Agreement (''Pension Agreement''). Paragraph 4.042(c) of the Pension Agreement requires a ''Special Contribution Amount'' and specifies the funding goals that the Plan must meet for plan years beginning July 1, 1984:

(i) The ''Special Contribution Amount'' shall be the level annual amount which, on the basis of a Certified Actuarial Projection, the Plan Actuary certifies will, when added to the amounts otherwise required by law (determined without regard to any credit balance in the funding standard account) * * * be sufficient to make the Funding Percentage as of the Applicable Funding Goal Date at least equal to the Applicable Funding Goal.

(ii) The term ''Funding Percentage'' shall mean for any Plan year, the percentage derived by dividing the market value of the assets of the Pension Fund by the present value of the nonforfeitable benefits within the meaning of ERISA section 4213(c)(A), both values to be as determined in the Certified Actuarial Projection as of the end of such Plan year.

(iii) For the first through the fifth Plan Years commencing on or after July 1, 1984, the term ''Applicable Funding Goal'' for each such Plan Year shall mean 50 percent (50%), and the ''Applicable Funding Goal Date'' for each such Plan Year shall mean the last day of the tenth such Plan Year; for each succeeding Plan Year, the term ''Applicable Funding Goal'' shall mean the percentage set forth in the Accelerated Funding Schedule for the Plan Year commencing four years after the end of the Plan Year in question, and the ''Applicable Funding Goal Date'' for each such Plan Year shall mean the last day of the Plan Year commencing four years after the end of the Plan Year in question.

(iv) The ''Accelerated Funding Schedule'' shall be the following schedule:

| Plan year | Percent |
|---|---|
| 10 | 50 |
| 11 | 53 |
| 12 | 56 |
| 13 | 59 |
| 14 | 62 |
| 15 | 65 |
| 16 | 68 |
| 17 | 71 |
| 18 | 74 |
| 19 | 77 |
| 20 and over | 80 |

(v) The ''Certified Actuarial Projection'' shall be a projection, which is prepared as of each actuarial valuation date so as to derive the Funding Percentage on the Applicable Funding Goal Date, by using the actuarial assumptions and methods utilized in the December 31, 1982 Actuarial Valuation of the Plan and the then current assets and census data, which projection shall be certified to in each Plan Year by the Plan actuary. This projection shall be on the basis of: (1) The benefit levels in effect during the Plan Year for which the projection is made, and (2) the Contributions required for such Plan Year * * * together with any Special Contribution Amounts. When the Applicable Funding Goal is met for the twentieth or subsequent Plan Year, the Special Contribution Amount may be limited to the amount necessary to maintain such Applicable Funding Goal for each subsequent Plan Year.

Notice of Approval, 49 FR 6043, 6046 (1984).

An additional funding requirement is contained in paragraph 4.011 of the Pension Agreement. That provision requires that: ''Notwithstanding any other provision of this Plan, the Contributions for each Plan Year shall be not less than the total administrative

costs and benefits to be paid by the Trustee during the Plan Year.'' Notice of Approval, 49 FR 6043, 6045 (1984).

**Proposed Modification to Special Rules**

On July 21, 1997, the Plan adopted an amendment to the approved special withdrawal liability rules, which amendment eliminates the requirement under paragraph 4.011 of the Pension Agreement that contributions for each Plan year shall be at least equal to benefits and administrative costs paid in the year. In lieu of that requirement, the parties to the Pension Agreement signed a Letter of Understanding on July 21, 1997, whereby the parties agree that:

[S]hould the Funding Percentage for the ILWU–PMA Pension Plan (as defined in paragraph 4.042(c)(ii) of the Plan) fall below eighty-five percent (85%) as of the beginning of a particular Plan Year, the Contributions in the following Plan Year shall not be less than the lesser of: (a) The total administrative costs and benefits to be paid by the Trustees during said following Plan Year, or (b) the amount required to increase the Funding Percentage for said following Plan Year to eighty-five percent (85%).

Because the requirement that contributions be no less than administrative costs and benefits paid in a given year is no longer specifically set out in the Plan or the Pension Agreement, PBGC has advised the Plan's representative that if PBGC should approve the amendment modifying the Plan's special withdrawal liability rules such approval will be under the following condition: ''The Plan's special withdrawal liability rules will be void as of the first day of the Plan Year following a Plan Year for which the Plan is not at least eighty-five percent (85%) funded, and during said following Plan Year the Contributions are less than the least of (a) total administrative cost and benefits for said following Plan Year or (b) the amount required to increase the Funding Percentage to eighty-five percent (85%) for said following Plan Year or (c) the maximum tax-deductible contribution to the Plan.'' The Plan has agreed to certify to these conditions annually.

No other changes are proposed to the special withdrawal liabilities rules as approved by the PBGC on January 30, 1984.

**Reason for Modification**

According to the Plan's request, the funded status of the Plan has improved significantly since 1984, and, based on the Plan's improved funded status, ''the potential has now arisen for unpredictable and volatile contributions to the [Plan] under certain investment scenarios'', and ''if the current contribution requirements were to be continued, there is a significant risk that, under certain investment scenarios the plan could potentially reach the tax deductible contribution limit in the near future.'' Depending on fluctuations in the investment market, annual contribution requirements under the Plan could range from zero to over $100 million, depending on the tax deductibility of each year's contributions. According to the Plan's request, the proposed modification to the current contribution requirement allows the Plan ''to better forecast contribution assessments * * * by reducing the contribution volatility as the plan nears the tax deductible limit on contributions.'' The request goes on to state that: ''[r]educing contribution volatility is important in maintaining a secure and soundly funded retirement program. These are the same valid arguments that prompted Congress to enact legislation this year to allow private plans greater contribution flexibility in dealing with the full funding limit.''

**Comments**

All interested persons are invited to submit written comments concerning the pending request to PBGC at the above address, on or before March 20, 1998. All comments will be made a part of the record. Comments received, as well as the application for approval of the plan amendments, will be available for public inspection at the address set forth above.

Issued at Washington, DC, on this 23rd day of January, 1998.

**David Strauss,**

*Executive Director.*

[FR Doc. 98–2730 Filed 2–2–98; 8:45 am]

BILLING CODE 7708–01–P

## POSTAL RATE COMMISSION

### Sunshine Act Meetings

**NAME OF AGENCY:** Postal Rate Commission.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** FR Vol. 63, No. 9, Wednesday, January 14, 1998.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:30 a.m., January 29, 1998.

**CHANGES IN THE MEETING:** Decision in Docket No. A97–19 to be considered also.

**CONTACT PERSON FOR MORE INFORMATION:** Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6820.

Dated: January 29, 1998.

**Margaret P. Crenshaw,**

*Secretary.*

[FR Doc. 98–2675 Filed 1–29–98; 5:01 pm]

BILLING CODE 7710–FW–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39580; File No. SR–Amex–97–48]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Listing and Trading of Index Warrants on the Merrill Lynch 1998 Equity Focus Index

January 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Amex proposes to approve for listing and trading index warrants based on the Merrill Lynch 1998 Equity Focus Index (''Index''), an equal-dollar weighted index developed by Merrill Lynch, Pierce, Fenner & Smith, Inc. comprised of stocks (or American Depositary Receipts (''ADRs'') thereon) which are traded on the New York Stock Exchange (''NYSE'') or through the facilities of the National Association of Securities Dealers Automated Quotation system (''NASDAQ''). The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

**II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Under Section 106, Currency and Index Warrants, of the Amex Company Guide, the Exchange may approve for listing index warrants based on foreign and domestic market indices. The Exchange represents that listing and trading of warrants on the Index will comply in all respects to Amex Rules 1100 through 1110 for the trading of stock index and currency warrants.

Warrant issues on the Index will conform to the listing guidelines under Section 106, which provide, among other things, that (1) the issuer must have tangible net worth in excess of $250,000,000 and otherwise substantially exceed the earnings requirements of Section 101(A) of the *Company Guide* or meet the alternate criteria set forth in paragraph (a); (2) the term of the warrants shall be for a period ranging from one to three years from date of issuance; and (3) the minimum public distribution of such issues must be 1,000,000 warrants, together with a minimum of 400 public holders, and aggregate market value of $4,000,000.

Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a ''put'' would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated index level. Conversely, holders of a warrant structured as a ''call'' would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated index level. If ''out-of-the-money'' at the time of expiration, the warrants would expire worthless. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

The Index

The Amex is proposing to list index warrants based on the Index, an equal-dollar weighted Index developed by Merrill Lynch, Pierce, Fenner & Smith Incorporated representing a portfolio of large, actively traded stocks representing various industries. According to the Amex, the total market capitalization of the Index totaled $380 billion on December 10, 1997. The median capitalization of the companies in the Index on that date was $9.4 billion and the average market capitalization of these companies was $22 billion. The individual market capitalization of the companies ranged from $1.7 billion to $106 billion. Minimum monthly trading volume in the Index stocks ranged from approximately 330,000 shares to 54.4 million shares during the six month period from June through November 1997. According to the Exchange, 15 of the Index's 17 component securities meet the current criteria for standardized options trading set forth in Rule 915. Only two component securities, Telecom Italia SpA and Toyota Motor Corporation, are represented by ADRs and in both instances, comprehensive surveillance sharing arrangements are in place with the appropriate regulatory authorities in each relevant country. The Amex represents that no component security represents more than 25% of the weight of the index and the five highest weighted securities do not account for more than 50% of the weight of the Index.

The Index is calculated using an ''equal-dollar weighting'' methodology designed to ensure that each of the component securities is initially represented in an approximately ''equal'' dollar amount in the Index. Specifically, each security included in the Index will be assigned a multiplier on the date of issuance of the warrant so that each component represents an equal percentage of the value of the Index at that time. The multiplier indicates the number of shares of a security (or the fraction of one share), given its market price on an exchange or through NASDAQ, to be included in the calculation of the Index. Accordingly, each of the 17 companies included in the Index will present approximately 5.882 percent of the weight of the Index at the time of issuance of the warrant The Index multipliers will be determined to yield an Index value of 100.00 on the date the warrant is priced for initial offering to the public.

As noted above, the multiplier of each of the 17 component stocks in the Index portfolio remains fixed except in the event of certain types of corporate actions. Such corporate action includes the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event. The multiplier of each component stock may also be adjusted, if necessary, in the event of a merger, consolidation, dissolution of liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of an issuer or the imposition of certain foreign taxes on shareholders of a foreign issuer. Shares of a component stock may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into another class of security, the termination of a depositary receipt program or the spin-off of a subsidiary. If the stock remains in the Index, the multiplier of that security in the portfolio may be adjusted to maintain the component's relative weight in the Index at the level immediately prior to the corporation action. In the event that a security in the Index is removed due to a corporate consolidation and the holders of such security receive cash, the cash value of such security will be included in the Index and will accrue interest at LIBOR to term, compounded daily.

Similar to other stock index values published by the Exchange, the value of the proposed Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [3] in general and furthers the objectives of Section 6(b)(5) [4] in particular in that the rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

[3] 15 U.S.C. 78f(b).

[4] 15 US.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions shall file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–97–48 and should be submitted by February 24, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–2526 Filed 2–2–98; 8:45 am]

**BILLING CODE 8010–01–M**

[5] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39581; File No. SR–CBOE–97–38]**

## Self-Regulatory Organizations; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing and Trading Standards for Index Portfolio Receipts

January 26, 1998.

**I. Introduction**

On August 14, 1997, the Chicago Board Options Exchange, Inc., (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Interpretation .02 to Rule 1.1, Rule 30.10, Interpretation .03 to Rule 30.20, Interpretation .01 to Rule 30.33, Rule 30.36, Rule 30.54, Rule 30.55, Rule 31.5 and Rule 31.94 to provide for the listing and trading of Index Portfolio Receipts (''IPRs''), which are securities issued by a unit investment trust and holding a portfolio of securities linked to an index.

The proposed rule change together with the substance of the proposal was published for comment in the **Federal Register** on October 9, 1997.[3] No comments were received on the proposal. The Exchange filed Amendment No. 1 to the proposed rule filing on January 16, 1998.[4] This order approves the proposal.

**II. Background and Description**

The Exchange proposes to adopt new Interpretation .02 to Rule 1.1, Rule 30.10, Interpretation .01 to Rule 30.33, Rule 30.36, Rule 30.54, Rule 30.55, Rule 31.5 and Rule 31.94 to accommodate trading on the CBOE of IPRs, *i.e.*, securities which are interests in a unit investment trust (''Trust'') holding a portfolio of securities linked to an index. Each Trust will provide investors with an instrument that (i) closely tracks the underlying portfolio of securities, (ii) trades like a share of common stock, and (iii) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).[5]

The proposed rules are substantially similar to existing rules of the American Stock Exchange (''AMEX'') applicable to Portfolio Depository Receipts (''PDRs''), which are substantively very similar to IPRs.[6] IPRs will be issued by one or more Trusts to be formed by an entity serving as the sponsor for the Trusts (the ''Sponsor'').[7] Upon receipt of securities and cash in payment for a creation order placed through the Distributor as described below, the Trustee will issue a specified number of IPRs referred to as a ''Creation Unit.''

Each series of IPRs will be based on a published index or portfolio of securities. IPRs of each such series are intended to produce investment results that generally correspond to the price and yield performance of the component common stocks of the selected index or portfolio. Each Trust will provide investors with an interest in a portfolio of securities that is intended to closely track the value of the index or portfolio on which it is based. IPRs will trade like shares of common stock and will pay periodic dividends proportionate to those paid

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39189 (October 2, 1997), 62 FR 52798.

[4] The amendment withdraws a proposed general exemption of IPRs from the Exchange's short sale rule. See letter from Ilan Huberman, Schiff, Hardin & Waite (CBOE counsel), to Kevin Ehrlich, Attorney, Division of Market Regulation (''Division''), Commission, dated January 16, 1998.

[5] The CBOE has a request pending before the Division seeking exemptive, interpretive, or no-action relief from Rules 10a–1, 10b–7, 10b–10, 10b–13, 10b–17, 11d1–2, 15c1–5, 15c1–6 and Rules 101, 102 and 104 of Regulation M under the Act and Section 16 of the Act, relating to IPRs.

[6] See File No. SR–AMEX–92–18 (adopting new rules related to the listing and trading of PDRs); SR–AMEX–95–16 (providing that the minimum tick applicable to the MidCap SPDR, a PDR product, will be 1/64 of $1.00); SR–AMEX–94–52 (listing and trading of MidCap 400 SPDRs under the rules originally adopted to trade PDRs); SR–AMEX–93–41 (limiting the AMEX's liability in connection with its administration of proprietary indices and products); and SR–AMEX–92–45 (providing that the minimum tick applicable to SPDRs will be 1/32 of $1.00).

[7] The CBOE anticipates that all of the Trusts will be governed by a master trust agreement providing for the issuance, in series, of IPRs based on different underlying indices. The Sponsor will file (i) a registration statement under the Investment Company Act of 1940 (''Investment Company Act'') registering the trust (consisting of such series of Trusts) as an investment company under the Investment Company Act, and (ii) a separate registration statement under the Securities Act of 1933 (the ''Securities Act'') registering the offer and sale of each series of IPRs. The Sponsor will also file an application under Section 6(c) of the Investment Company Act requesting exemption of the Trusts and the Sponsor from certain provisions of the Investment Company Act and permitting the Trusts and the Sponsor to engage in certain affiliated transactions otherwise prohibited by Section 17(d) of the Investment Company Act and Rule 17d–1 thereunder. The Commission notes that no Sponsor has been identified as of the date of the approval order.

with respect to the underlying portfolio of securities, less certain expenses, as described in the prospectus for each series of IPRs. The Exchange expects that the Trusts will terminate 125 years from the initial date of deposit of the trust corpus into each respective Trust or on such earlier date as may be required in order to permit such Trust to comply with the rule against perpetuities, in the event that the Trust is governed by the law of a state in which the rule against perpetuities remains in effect.[8]

The Sponsor will enter into a trust agreement with a trustee in accordance with Section 26 of the Investment Company Act. The CBOE will establish a relationship with an entity that will act as the underwriter of IPRs on an agency basis (''Distributor''). All orders to create IPRs in Creation Units will be required to be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee. The Distributor will be a registered broker-dealer and a member of the National Association of Securities Dealers, Inc. (''NASD'').

Payment with respect to creation orders for a Trust placed through the Distributor will be made by (1) the ''in-kind'' deposit with the Trustee of a specified portfolio of securities that contains substantially the same securities in substantially the same proportions or ''weighting'' as the component securities of the index or portfolio on which the Trust is based and (2) a cash payment sufficient to enable the Trustee to make a distribution (''Dividend Equivalent Payment'') to the holders of beneficial interests in the Trust on the next dividend payment data as if all the securities had been held for the entire accumulation period for the distribution, subject to certain specified adjustments (see ''Distributions'' below) plus or minus a ''Balancing Amount'' to compensate for any differences between the market value of the securities paid and the net asset value of a Creation Unit of such Trust. The Dividend Equivalent Payment and the Balancing Amount are collectively referred to as the ''Cash Component.'' The portfolio of securities and the Cash Component accepted by the Trustee are referred to as the ''Portfolio Deposit.''

*Issuance of IPRs*

Upon receipt of a Portfolio Deposit for a Trust in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of IPRs of that Trust equal to the Creation Unit. IPRs may be created only in a Creation Unit or multiples thereof. The Exchange anticipates that a Creation Unit for a series of IPRs will consist of 50,000 IPRs or such other number as the Exchange may designate taking into account the value of individual IPRs of that particular series and such other factors as the Exchange deems to be relevant. It is anticipated that the Trust and Sponsor will obtain necessary regulatory approval to allow individual IPRs to be traded in the secondary market similar to other equity securities.[9] It is excepted that Portfolio Deposits will be made by institutional investors and arbitragers as well as Market-Makers and Designated Primary Market-Makers as defined in the CBOE's rules.

To maintain the correlation between the portfolio of securities held in a Trust and that of the underlying index or portfolio, the Trustee will adjust the composition of the Portfolio Deposits from time to time to conform to changes to the index or portfolio made by the organization that compiles and maintains such index or portfolio. The Trustee will aggregate certain of these adjustments and make periodic conforming changes to the Trust portfolio.

It is expected that the Trustee or Sponsor will make available (a) on a daily basis, a list of the names and required number of shares for each of the securities in the then current Portfolio Deposit for each of the Trusts; (b) on at least a minute-by-minute basis throughout the day, a number representing the value (on a per IPR basis) of the securities portion of each Portfolio Deposit; and (c) on a daily basis, the accumulated dividends, less expenses, per each outstanding IPR unit.

Transactions in IPRs may be effected on the Exchange until 3:15 p.m. Chicago time each business day.[10] IPRs will trade in round lots of 100.

*Redemption*

IPRs will be redeemable in kind by tendering them to the Trustee, but only in Creation Unit aggregations. While holders may sell any number of IPRs in the secondary market at any time, they must accumulate a minimum number of IPRs equal to a Creation Unit in order to redeem through a Trust. IPRs will remain outstanding until redeemed or until termination of the Trust by which they were issued. Creation Units of a Trust will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust substantially identical in weighing and composition to the securities portion of the Portfolio Deposit for such Trust in effect on the date request is made for redemption, together with the Cash Component. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in such a Portfolio Deposit on the day the redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees will be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

*Distributions*

The Trusts will pay dividends quarterly. It is expected that the regular quarterly ex-dividend dates for an underlying index or portfolio of securities traded on the New York Stock Exchange, Inc. (''NYSE'') will be the third Friday in March, June, September and December, unless such day is an NYSE holiday, in which case the ex-

[8] Each Trust however may be terminated earlier under the following circumstances: (1) Delisting of the IPRs issued by such Trust by the primary market on which the IPRs are traded; (2) termination of the license agreement with the owner of the index on which the Trust is based; or (3) if either the Trustee, Sponsor, Distributor, Depository Trust Company (''DTC'') or the National Securities Clearing Corporation (''NSCC'') is unable to perform its functions or duties with respect to operation of a Trust and a suitable successor entity is unavailable. In addition, the Sponsor may also terminate a Trust if, after six months from inception, the Trust net asset value falls below $150 million or such other amount as may be specified in the prospectus, or if, after three years from inception, the Trust net asset value falls below $350 million or such other amount as may be specified in the prospectus. IPRs cannot be traded after the termination of a Trust. However, on termination the Trust will be liquidated, and IPR holders at that time will receive a distribution equal to their pro rata share of the assets of the Trust, net of certain fees and expenses.

[9] At such time as the Exchange seeks to list series of IPRs, the Sponsor and the Trusts will file with the Commission an application seeking, among other things, an order: (1) Permitting secondary market transactions in IPRs at negotiated prices, rather than at a current public offering price described in the prospectus for the applicable series of IPRs as required by Section 22(d) of the Investment Company Act and Rule 22c–1 thereunder; and (2) permitting the sale of IPRs to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by Section 4(3) of the Securities Act but may be required according to Section 24(d) of the Investment Company Act for redeemable securities issued by a unit investment trust. These exemptions, if granted, will permit IPRs to be traded in secondary market transactions just as interests in a closed-end investment company are traded.

[10] See CBOE Rule 30.4(c) which provides that the ''hours during which transactions in * * * UIT interest may be made on the Exchange shall be as provided in Rule 24.6 in respect of index options.'' Rule 24.6 provides a 3:15 p.m. closing time.

dividend date will be the preceding Thursday. Holders of IPRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date (''Dividend Payment Date''). On the Dividend Payment Date, dividends payable will be distributed for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date through the business day preceding the current ex-dividend date.[11] The Trustee will compute on a daily basis the dividends accumulated for each Trust within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee. IPRs will be registered in book entry form only, which records will be kept by DTC.

*Criteria for Initial and Continued Listing*

The CBOE's proposed standards for listing and delisting of IPRs allow some flexibility in listing each series of IPRs. With respect to initial listing, the Exchange proposes that, for each series, the Exchange will establish a minimum number of IPRs required to be outstanding at the time of commencement of Exchange trading. For IPRs having a Creation Unit size of 50,000 IPRs, a minimum of 150,000 IPRs of each such series (*i.e.*, three Creation Units) will be required to be outstanding when trading on such series of IPRs begins.

Because the Trusts operate on an open-end basis, and because the number of holders of IPRs of each Trust is subject to substantial fluctuation depending on market conditions, the Exchange believes it would be inappropriate and burdensome on IPR holders to consider suspending trading in or delisting a series of IPRs, with the consequent termination of the Trust by which they were issued, unless the number of holders remains severely depressed during an extended time period. Therefore, following twelve months from the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, IPRs of any series when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) The Trust by which IPRs of such series are issued has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of IPRs of such series for 30 or more consecutive trading days; or

(b) The index on which the Trust is based is no longer calculated or available; or

(c) Such other event shall occur or condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing, and the series of IPRs representing interests in such Trust will be redeemed as described in the prospectus for such series. A Trust may also terminate under such other conditions as may be described in the prospectus for such series. For example, the Sponsor, following notice to IPR holders, will have discretion to direct that a Trust be terminated if the value of securities held by such Trust falls below a specified amount. A Trust based on an index or portfolio licensed to the Exchange by a third party will also terminate if the required license terminates.[12]

*Trading Halts*

Prior to commencement of trading in IPRs, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Exchange Rule 24.7 in exercising its discretion to halt or suspend trading. These factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the value of the applicable current index group or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Also, IPR trading would be halted (along with trading in other securities on the Exchange) if the circuit breaker parameters under Exchange Rule 6.3B are reached.

*Terms and Characteristics*

The Exchange proposes to require that members and member organizations provide to all purchasers of each series of IPRs a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to such purchaser. The Exchange also proposes to require that such description be included with any sales material on that series of IPRs that is provided to customers or the public. In addition, the Exchange proposes to require that any other written materials provided by a member or member organization to customers or the public making reference to a specific series of IPRs as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of IPRs] is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of IPRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of IPRs].'' Finally, as noted above, the Exchange requires that members and member organizations provide the prospectus for a series of IPRs to customers upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase IPRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are applicable to members and member organizations.

*Trading of IPRs*

Dealings in IPRs on the Exchange will be conducted pursuant to the Exchange's rules governing the trading of equity securities in general. The Exchange's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Exchange equity rules and procedures will also apply, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of market-makers.

**III. Discussion**

The Commission finds that the proposed rule change is consistent with

[11] Because the Trusts intend to qualify for and elect tax treatment as regulated investment companies under the Internal Revenue Code, the Trustee will also be required to make additional distributions to the minimum extent necessary (i) to distribute the entire annual taxable income of each Trust, including any net capital gains from sales of securities in connection with adjustments to the portfolio of securities held by such Trust, or to generate cash for distributions, and (ii) to avoid imposition of the excise tax imposed by Section 4982 of the Internal Revenue Code.

[12] See supra note 8.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[13] The Commission believes that providing for the exchange-trading on the CBOE and IPRs will offer investors an efficient way of participating in the securities markets. In particular, the Commission believes that the trading on the CBOE and IPRs will provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low-cost security replicating the performance of a portfolio of stocks at negotiated prices throughout the business day.[14] The Commission also believes that IPRs will benefit investors by allowing them to trade securities based on unit investment trusts in secondary market transactions.[15]

The Commission believes that the trading on the CBOE of a security like IPRs, which replicate the performance of an index or portfolio of stocks, could benefit the equities markets by, among other things, helping to ameliorate the volatility occasionally experienced in such markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as IPRs, can trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[16]

The 1987 Market Break Report noted the potential benefits to be derived from providing a market where institutional investors and member firms could focus their equity transactions at posts trading a portfolio of stocks in a single transaction. In particular, the 1987 Market Break Report noted that the specialist(s) and the trading crowd(s) at the portfolio post could provide additional liquidity, that is currently unavailable at the posts for trading in each of the individual stocks, as well as provide the additional efficiencies associated with effecting a single transaction in a portfolio of securities as opposed to numerous transactions in individual stocks. The additional layer of liquidity to the market could help absorb the velocity and concentration of trading associated with index-related trading strategies involving individual stocks. Because market portfolio instruments would be traded at a single location on an exchange floor, the potentially adverse effects of program trading order flows during volatile market conditions, such as imbalances in particular stocks, would be diminished. Moreover, the trading of a single security replicating the performance of a broad portfolio of stocks, in general, will provide an easy and inexpensive methods to clear and settle a portfolio of stocks. Accordingly, given the design of the IPRs in general, the Commission believes that the benefits to the marketplace noted above resulting from the trading of a ''basket'' product likely will result from the trading of IPRs.

The Commission also believes that IPRs will provide investors with several advantages over standard open-end index mutual fund shares. In particular, provided the necessary Investment Company Act relief is obtained, investors will have the ability to trade IPRs continuously throughout the business day in secondary market transactions at negotiated prices.[17] In contrast, pursuant to Investment Company Act Rule 22c–1,[18] holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.[19] Accordingly, IPRs will allow investors to (1) respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies nor currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although IPRs are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, IPRs are equity securities that are priced off a portfolio of stocks based on a selected index or basket of stocks. Accordingly, the level of risk involved in the purchase or sale of an IPR is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for IPRs is based on a basket of stocks. Nonetheless, the Commission has several specific concerns regarding the trading of these securities. In particular, IPRs raise disclosure, market impact, and secondary market trading issues that must be addressed adequately. As discussed in more detail below, the Commission believes the CBOE has adequately addressed these concerns.

*Disclosure*

The Commission believes that the CBOE proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading IPRs. As noted above, the proposal contains four aspects addressing disclosure concerns. First, CBOE members must provide their customers trading IPRs with a written explanation of any special characteristics and risks attendant to trading such IPR securities, in a form approved by the CBOE.[20] Second, members and member organizations must include this written product description with any sales material relating to the series of IPRs that is

[13] 15 U.S.C. 78f(b)(5).

[14] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[15] The Commission notes, however, that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem IPRs in creation unit share sizes. Nevertheless, IPRs would have the added benefit of liquidity from the secondary market and IPR holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[16] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a ''basket'' or group of fifteen or more stocks having a total market value of $1 million or more.

[17] Because of potential arbitrage opportunities, the Commission believes that IPRs will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of IPRs comparable to their net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes a Trust generally should track is underlying index more closely than an open-end index fund because a Trust will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, a Trust will redeem only in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the underlying index.

[18] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principle underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission notes that the CBOE would need to apply for an exemption to allow particular IPR products to trade at negotiated prices in the secondary market.

[19] *Id.*

[20] The Commission notes that the CBOE will be required to prepare a product description for members and submit it to the Division for review prior to listing and trading any IPR product.

provided to customers or the public. Third, any other written materials provided by a member or member organization to customers or the public referencing IPRs as an investment vehicle must include a statement, in a form specified by the CBOE, that a circular and prospectus are available from a broker upon request. A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of IPRs for such omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms. Accordingly, the Commission believes that investors in IPR securities will be provided with adequate disclosure of the unique characteristics of the IPR instruments and other relevant information pertaining to the instruments. Fourth, CBOE Rule 30.50, Doing Business with the Public, which includes customer suitability provisions, will apply to the trading of IPRs.[21]

*Market Impact*

The Commission believes the CBOE has adequately addressed the potential market impact concerns raised by the proposal. The CBOE has developed policies regarding trading halts in IPRs. Specifically, the Exchange would halt IPR trading if the circuit breaker parameters under CBOE Rule 6.3B were reached. In addition, in deciding whether to halt trading or conduct a delayed opening in IPRs, the CBOE represents that it will be guided by, but not necessarily bound to, relevant stock index option trading rules. Specifically, consistent with CBOE Rule 24.7, the CBOE may consider whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The CBOE has not proposed at this time a specific IPR that it intends to trade. The CBOE's proposed listing standards provide it with broad authority to list IPRs ''based on one or more stock indices or securities portfolios.'' Accordingly, it is difficult for the Commission to assess the potential market impact of trading a particular IPR series. To date, several products nearly identical to IPRs, notably Standard & Poor's Depositary Receipts (''SPDRs'') and Standard & Poor's MidCap 400 Depositary Receipts (''MidCap SPDRs'') trade on one or more U.S. exchanges. These products have not adversely impacted U.S. equities markets. In fact, such products appear to provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks. All of the current approved/traded IPR-like products, however, are based on broad-based stock indices containing large capitalized, liquid stocks.

IPRs theoretically can serve as substitutes for transactions in the cash market, resulting in order flow in individual stocks smaller than would otherwise be the case. Such an occurrence is more likely to cause a noticeable market impact where the subject stocks have relatively low capitalization and are liquid. As a result, the Commission believes that the CBOE should contact the Division and provide it with advance notice of the listing of a specific IPR. The Division may determine that a rule filing, pursuant to Section 19 of the Act, will be required in order to approve a particular index or portfolio as appropriate for IPR trading.

*Trading Rules*

The Commission finds that the CBOE's proposal contains adequate rules and procedures to govern the trading of IPR securities. IPRs are Unit Investment Trust (''UIT'') securities, which, under CBOE rules, subjects them to the fully panoply of rules governing the trading of such securities on the CBOE, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of market-makers.[22] IPRs will also be subject to the same margin requirements as equity securities.[23] Further, the Commission notes that the CBOE has submitted surveillance procedures for the trading of IPRs and believes that those procedures, which incorporate and rely upon existing CBOE surveillance procedures governing equities, are adequate under the Act. In addition, the CBOE has developed specific listing and delisting criteria for IPRs that will help to ensure that the markets for IPRs will be deep and liquid. As noted above, the CBOE's proposal provides for trading halt procedures governing IPRs. Finally, the Commission notes that CBOE Rule 30.50, Doing Business with the Public, which includes customer suitability provisions, will apply to the trading of IPRs in general.

The CBOE has not represented that it intends to trade IPRs (or securities traded on other exchanges that are nearly identical to IPRs) pursuant to unlisted trading privileges. However, if the CBOE chose to trade instruments such as SPDRs and MidCap SPDRs pursuant to unlisted trading privileges, adoption of IPR listing standards satisfies Rule 12f–5 of the Act which requires that an exchange have in effect ''rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.'' Nevertheless, prior to trading IPRs (or similar securities) pursuant to unlisted trading privileges, the CBOE should make certain that it has adequately addressed other potential issues, and particularly, should ensure that the required product description is made available to investors.[24] The Commission notes that while the CBOE would not be required to make further 19(b) rule filings to trade PDRs pursuant to UTP, the CBOE should submit materials such as the relevant product description and circular to Division staff for review prior to commencing trading.

## IV. Conclusion

The Commission finds that the listing and trading of IPRs is consisent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). As discussed above, the trading of IPRs should provide a variety of benefits to the marketplace and investors trading portfolios of securities. Accordingly, the Commission believes that IPRs will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and,

[21] CBOE Rule 30.50 provides, in part, that every member organization shall use due diligence to learn the essential facts relative to every customer and to every order or account accepted and shall supervise diligently the handling of all customer accounts. Rule 30.50 Interpretations, and Policies .02 further provides, in part, that customers should be provided with an explanation of any special characteristics and risks attendant to trading UIT interests.

[22] Telephone conversation between James McDaniel, Schiff, Hardin & Waite (CBOE counsel), and Kevin Ehrlich, Attorney, Division, Commission (January 22, 1998).

[23] Telephone conversation between James McDaniel, Schiff, Hardin & Waiter (CBOE counsel), and Kevin Ehrlich, Attorney, Division, Commission (January 22, 1998).

[24] For a more detailed description of potential unlisted trading privilege-related issues, *see* Release Nos. 39076 (Sept. 15, 1997), 62 FR 49270 (Sept. 19, 1997) (''CHX Approval Order''); 39268 (Oct. 22, 1997), 62 FR 56211 (Oct. 29, 1997) (''CSE Approval Order''); 39461 (Dec. 17, 1997), 62 FR 6764 (Dec. 29, 1997) (''PCX Approval Order'').

protect investors and the public interest.[25]

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 1 withdraws from the proposed rule change a proposed general exemption of IPRs from the Exchange's short sale rule. The CBOE originally anticipated that the Commission would grant a general exemption from Rule 10a–1 of the Act for all IPRs prior to the approval of this filing. However, to date, such an exemption has not been granted. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act, to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether this proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any other person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submission should refer to File No. SR–CBOE–97–38 and should be submitted by February 24, 1998.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–CBOE–97–38) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–2524 Filed 2–2–98; 8:45 am]

**BILLING CODE 8010–01–M**

[25] In approving this rule, the Commission has consisted the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39585; File No. SR–CBOE–98–02]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change By Chicago Board Options Exchange, Inc. To Limit Number of Consecutive Terms Executive Committee Chairman May Serve

January 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 16, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Section 8.1(a) of the Exchange Constitution to limit the number of consecutive terms that may be served by the Chairman of the Executive Committee. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed amendment to Section 8.1 of the CBOE's Constitution is to limit the number of terms that may be served by the Chairman of the Executive Committee, who also serves as the Vice Chairman of the Exchange. Section 7.2 of the CBOE Constitution provides the Executive Committee members are elected for a term of one year. Currently, Section 8.1 of the CBOE's Constitution does not provide for any limit to the number of terns a Vice Chairman may serve. The CBOE is proposing to amend Section 8.1 to provide that the same person may be elected to the office of Vice Chairman up to three consecutive one year terms. For purposes of this limit, a combination of at lease six months of a one-year term plus the next two one-year terms is considered to be three consecutive one-year terms. A person becomes eligible to serve as Vice Chairman again, once that person has been out of that office for a period of six months or more.

The purpose of the proposed amendment to impose term limits on the office of the Vice Chairman is to ensure a diversity of experience and ideas in this strategic position of the Exchange. The proposed term limit will apply to the Vice Chairman in office at the time this rule change becomes effective and will take account any prior terms served by that person.

By amending the constitution to impose term limits on the office of Vice Chairman, the Exchange will ensure that the office of Vice Chairman will be dynamic and will present the Exchange with fresh ideas. Therefore, the rule change is consistent with Section 6 of the Act, in general, and Section 6(b)(5), in particular, in that it promotes just and equitable principles of trade, fosters cooperation among persons engaged in facilitating securities transactions, and protects investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[1] 15 U.S.C. 78s(b)(1).

organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–98–02 and should be submitted by February 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–2525 Filed 2–2–98; 8:45 am]

BILLING CODE 8010–01–M

## SELECTIVE SERVICE SYSTEM

### Forms Submitted to The Office of Management and Budget for Extension of Clearance

The following forms, to be used only in the event that inductions into the armed services are resumed, have been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS–254

*Title:* Application for Voluntary Induction.

*Purpose:* Is used to apply for voluntary induction into the Armed Services.

*Respondents:* Registrants or nonregistrants who have attained the age of 17 years, who have not attained the age of 26 years and who have not completed his active duty obligation under the Military Selective Service Act.

*Frequency:* One-time.

*Burden:* The reporting burden is twelve minutes or less per individual.

SSS–350

*Title:* Registrant Travel Reimbursement Request.

*Purpose:* Is used to request reimbursement for expenses incurred when traveling to or from a Military Entrance Processing Station in compliance with an official order issued by the Selective Service System.

*Respondents:* All registrants required to travel to or from a Military Entrance Processing Station at their own expense.

*Frequency:* One-time.

*Burden:* The reporting burden is ten minutes or less per request.

Copies of the above identified forms can be obtained upon written request to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form(s) should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, D.C. 20503.

Dated: January 26, 1998.

**Gil Coronado,**

*Director.*

[FR Doc. 98–2619 Filed 2–2–98; 8:45 am]

BILLING CODE 8015–01–M

## SMALL BUSINESS ADMINISTRATION

**[License No. 01/01–0365]**

### Citizens Ventures, Inc.; Notice of Issuance of a Small Business Investment Company License

On May 6, 1997, an application was filed by Citizens Ventures, Inc., at 28 State Street, 15th Floor, Boston, Massachusetts 02109, with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01–0365 on September 17, 1997, to Citizens Ventures, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 19, 1998.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 98–2515 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[License No. 02/02–0574]**

### Dresdner Kleinwort Benson Private Equity Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On March 28, 1997, an application was filed by Dresdner Kleinwort Benson Private Equity Partners, L.P., at 75 Wall Street, 24th Floor, New York, New York 10005, with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0574 on September 17, 1997, to Dresdner Kleinwort Benson Private Equity Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 19, 1998.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 98–2516 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

[2] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[License No. 02/72–0575]**

### East River Ventures, L.P.; Notice of Issuance of a Small Business Investment Company License

On February 27, 1997, an application was filed by East River Ventures, L.P., at 150 East 58th Street, 16th Floor, New York, New York 10155, with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0575 on September 26, 1997, to East River Ventures, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 19, 1998.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 98–2517 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[License No. 01/71–0367]**

### Imprimis SB, L.P.; Notice of Issuance of a Small Business Investment Company License

On September 17, 1997, an application was filed by Imprimis SB, L.P., at 411 West Putnam Avenue, Greenwich, Connecticut 06830, with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/71–0367 on December 31, 1997, to Imprimis SB, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 19, 1998.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 98–2518 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[License No. 05/05–0227]**

### Prairie Capital Mezzanine Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On July 9, 1997, an application was filed by Prairie Capital Mezzanine Fund, L.P., at 70 West Madison Street, Chicago, Illinois 60602, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0227 on September 26, 1997, to Prairie Capital Mezzanine Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 19, 1998.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 98–2519 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3046]**

### State of New York; Amendment #1

In accordance with notices from the Federal Emergency Management Agency dated January 17 and 21, 1998, the above-numbered Declaration is hereby amended to include the counties of Genessee, Monroe, Niagara, and Saratoga in the State of New York as a disaster area due to damages caused by severe winter and ice storms, high winds, and flooding, and to establish the incident period for this disaster as beginning on January 5, 1998 and continuing through January 17, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Erie, Fulton, Livingston, Montgomery, Ontario, Orleans, Rensselear, Schenectady, Wayne, and Wyoming in the State of New York may be filed until the specified date at the previously designated location. All other information remains the same, i.e., the deadline for filing applications for physical damage is March 10, 1998 and for economic injury the termination date is October 13, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 26, 1998.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 98–2511 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3053]**

### State of North Carolina; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated January 21, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on January 7, 1998 and continuing through January 21, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 16, 1998 and for economic injury the deadline is October 15, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 26, 1998.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 98–2509 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3049]**

### State of Tennessee; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated January 21, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on January 6, 1998 and continuing through January 21, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 13, 1998 and for economic injury the deadline is October 13, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 26, 1998.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 98–2510 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of New York, dated September 23, 1997, the United States Small Business Administration hereby revokes the license of Realty Growth Capital Corporation, a New York corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–0097 issued to Realty Growth Capital Corporation on March 29, 1963 and said license is hereby declared null and void as of September 30, 1997.

Small Business Administration.

Dated: January 27, 1998.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 98–2513 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Revocation of License of Small Business Investment Company

Pursuant to a Settlement Agreement between the United States Small Business Administration and Square Deal Venture Capital Corporation, dated January 12, 1998, the United States Small Business Administration hereby revokes the license of Square Deal Venture Capital Corporation, a New York corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–5374 issued to Square Deal Venture Capital Corporation on September 28, 1979 and said license is hereby declared null and void as of January 12, 1998.

Small Business Administration.

Dated: January 27, 1998.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 98–2512 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–M

## SMALL BUSINESS ADMINISTRATION

### Notice of the Procurement Marketing and Access Network (PRO-Net) Implementation

**AGENCY:** Small Business Administration.

**ACTION:** Notice to implement the Procurement Marketing and Access Network (PRO-*Net*).

**SUMMARY:** This notice advises the public that the Small Business Administration's (SBA) Office of Government Contracting (GC) is implementing the Procurement Marketing and Access Network (PRO-*Net*) as the primary basis for identifying and recommending potential small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, as sources for both prime, subcontracting, and partnership opportunities. The PRO-*Net* is replacing the Procurement Automated Source System (PASS) as a nationwide computerized storage and retrieval database. The PRO-*Net* is an internet-based electronic search engine for Federal Government contracting officers, and other interested parties, to identify small business sources.

The PRO-*Net* is a one-stop procurement shop for government contracting. The database is free of charge to Federal, State and local government agencies; contractors; and the public. It assists them in identifying and locating small business prime contractors, subcontractors, and partnership opportunities with small businesses. Each PRO-*Net* small business profile can include the company's products and services, past history, references, and other information pertinent to potential contracting entities. A key feature of the system is that participating companies can continually update their profiles with the most current information, including new products, services, and contract awards. Participating companies with e-mail addresses can be sent communications and procurement opportunities electronically. As an electronic gateway, PRO-*Net* is linked to the Commerce Business Daily, government agency home pages, and other sources of procurement opportunities. Participating companies with internet home pages can include a link to their web site in their PRO-*Net* profile, providing additional information to procurement officials about the company.

The PRO-*Net* internet address (URL) is (http://pro-net.sba.gov). Companies that do not currently have access to the internet can register for PRO-*Net* on any computer that has access to the internet, or at any SBA District Office, Business Information Center (BIC), Small Business Development Center (SBDC), SBA Office of Government Contracting (GC) Area Office, or GC field personnel.

**ADDRESSES:** Oliver H. Snyder, III, PRO-*Net* Program Manager, U.S. Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

**FOR FURTHER INFORMATION CONTACT:** Oliver H. Snyder, III, PRO-*Net* Program Manager, (202) 205–7650, FAX (202) 205–7324.

**SUPPLEMENTRY INFORMATION:** You may submit comments by sending electronic mail (e-mail) to: oliver.snyder@sba.gov.

Dated: January 27, 1998.

**Judith A. Roussel,**

*Associate Administrator for Government Contracting.*

[FR Doc. 98–2514 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice No. 2709]**

### Bureau of Oceans and International Environmental and Scientific Affairs; Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

**AGENCY:** Bureau of Oceans and International Environmental and Scientific Affairs, State.

**ACTION:** Public Notice.

**SUMMARY:** At its Sixteenth Meeting in Hobart, Tasmania, October 27 to November 7, 1997, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, define the reporting requirements, specify measures that must be taken to minimize the incidental taking of non-target species, require contracting parties to license their Flag vessels in

the Convention area, and urge vessel monitoring systems.

This notice lists the conservation measures adopted at the sixteenth meeting of CCAMLR as well as the conservation measures remaining in force from previous years which are not otherwise addressed by U.S. regulations (see **SUPPLEMENTARY INFORMATION**). This notice, therefore, together with the U.S. regulations referenced under Supplementary Information, provide a comprehensive register of all current U.S. obligations under CCAMLR.

**DATE:** Persons wishing to comment on the measures or desiring more information should submit written comments on or before March 5, 1998.

**FOR FURTHER INFORMATION CONTACT:** Alfred Schandlbauer, Office of Oceans Affairs (OES/OA), Room 5805, Department of State, Washington, D.C. 20520, 202–736–4928.

**SUPPLEMENTARY INFORMATION:** Individuals interested in CCAMLR should also see **Federal Register** Vol. 61, No. 244, December 18, 1996; **Federal Register** Vol. 61, No. 130, July 5, 1996; CFR part 902, Subpart G—Antarctic Marine Living Resources, and; CFR Chapter III—International Fishing and Related Activities, part 300—International Fisheries Regulations, Subpart A—General; Subpart B—High Seas Fisheries; and Subpart G—Antarctic Marine Living Resources for other regulatory measures related to conservation and management in the CCAMLR Convention area. These regulations give effect to CCAMLR Conservation Measures which are not expected to change from year to year and describe the process for regulating U.S. fishing in the Convention area. The regulations include sections on: Purpose and scope; Definitions; Relationship to other treaties, conventions, laws, and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific research; Initiating a new fishery; Exploratory fisheries; Reporting and record keeping requirements; Vessel and gear identification; Gear disposal; Mesh size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties. For copies of the figures and tables mentioned in the conservation measures, contact Alfred Schandlbauer at the Office of Oceans Affairs, Room 5805, Department of State, Washington, D.C. 20520 Tel: 202 736–4928.

Conservation Measures Adopted at the Sixteenth Meeting of the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR XVI):

At its Sixteenth Annual Meeting in Hobart, Tasmania, October 27 to November 7, 1997, the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR) revised several of its previously adopted Conservation Measures and adopted the following additional measures:

**Conservation Measure 29/XVI,** [2, 3, 4, 5]

*Minimization of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area*

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimizing their attraction to fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Adopts the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water. Only thawed bait shall be used.

2. For vessels using the Spanish method of longline fishing, weights should be released before line tension occurs; weights of at least 6 kg mass should be used, spaced at intervals of no more than 20 m.

3. Longlines shall be set at night only (i.e. during the hours of darkness between the times of nautical twilight). During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

4. The dumping of offal is prohibited while longlines are being set. The dumping of offal during the haul shall be avoided as far as possible; if discharge of offal during the haul is unavoidable, this discharge shall take place on the opposite side of the vessel to that where longlines are hauled.

5. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardizing the life of the bird concerned.

6. A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed. Specification of the streamer line and its method of deployment is given in the Appendix to this Measure. Details of the construction relating to the number and placement of swivels may be varied so long as the effective sea surface covered by the streamers is no less than that covered by the currently specified design. Details of the device dragged in the water in order to create tension in the line may also be varied.

7. Other variations in the design of streamer lines may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, providing that all other elements of this Conservation Measure are complied with.

**Conservation Measure 72/XVI**

*Prohibition of Directed Fishing for Finfish other than Longlining for Dissostichus spp. in Statistical Subarea 48.1*

Taking of finfish, other than for scientific research purposes, with the exception of longlining for Dissostichus spp. in waters deeper than 600 m in accordance with Conservation Measure UU/XVI, is prohibited in Statistical Subarea 48.1 from 8 November 1997 until at least such time that a survey of stock biomass is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

**Conservation Measure 73/XVI**

*Prohibition of Directed Fishing for Finfish other than Longlining for Dissostichus spp. in Statistical Subarea 48.2*

Taking of finfish, other than for scientific research purposes, with the exception of longlining for Dissostichus spp. in waters deeper than 600 m in accordance with Conservation Measure VV/XVI, is prohibited in Statistical Subarea 48.2 from 8 November 1997 until at least such time that a survey of stock biomass is carried out, its results reported to and analyzed by the

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] The exact times of nautical twilight are set forth in the Nautical Almanac tables for the relevant latitude, local time and date. All times, whether for ship operations or observer reporting, shall be referenced to GMT.

[4] Wherever possible, setting of lines should be completed at least three hours before sunrise (to reduce loss of bait to/catches of white-chinned petrels).

[5] The streamer lines under test should be constructed and operated taking full account of the principles set out in wg-imalf-94/19 (available from the CCAMLR Secretariat); testing should be carried out independently of actual commercial fishing and in a manner consistent with the spirit of Conservation Measure 65/XII.

Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

**Conservation Measure 118/XVI**

*Scheme to Promote Compliance by Non-Contracting Party Vessels with CCAMLR Conservation Measures*

The Commission hereby adopts the following Conservation Measure in accordance with Article ix.2(i) of the Convention:

1. A non-Contracting Party vessel which has been sighted engaging in fishing activities in the Convention Area is presumed to be undermining the effectiveness of CCAMLR Conservation Measures. In the case of any transhipment activities involving a sighted non-Contracting Party vessel inside or outside the Convention Area, the presumption of undermining the effectiveness of CCAMLR Conservation Measures applies to any other non-Contracting Party Vessel which has engaged in such activities with that vessel.

2. Information regarding such sightings shall be transmitted immediately to the Commission in accordance with Article xxii of this Convention. The Secretariat shall transmit this information to all Contracting Parties within one business day of receiving this information, and to the flag State of the sighted vessel as soon as possible.

3. The Contracting Party which sights the non-Contracting Party vessel shall attempt to inform the vessel that it has been sighted engaging in fishing activities in the Convention Area and is accordingly presumed to be undermining the objective of the Convention and that this information will be distributed to all Contracting Parties to the Convention and to the flag State of the vessel.

4. When a non-Contracting Party vessel referred to in paragraph 1 enters a port of any Contracting Party, it shall be inspected by authorised Contracting Party officials knowledgeable of CCAMLR Conservation Measures and shall not be allowed to land or tranship any fish until this inspection has taken place. Such inspections shall include the vessel's documents, log books, fishing gear, catch on board and any other matter relating to the vessel's activities in the Convention Area.

5. Landings and transhipments of all fish from a non-Contracting Party vessel which has been inspected pursuant to paragraph 4, shall be prohibited in all Contracting Party ports if such inspection reveals that the vessel has onboard species subject to CCAMLR Conservation Measures, unless the vessel establishes that the fish were caught outside the Convention Area or in compliance with all relevant CCAMLR Conservation Measures and requirements under the Convention.

6. Contracting Parties shall ensure that their vessels do not receive transhipments of fish from a non-Contracting Party vessel which has been sighted and reported as having engaged in fishing activities in the Convention Area and therefore presumed as having undermined the effectiveness of CCAMLR Conservation Measures.

7. Information on the results of all inspections of non-Contracting Party vessels conducted in the ports of Contracting Parties, and on any subsequent action, shall be transmitted immediately to the Commission. The Secretariat shall transmit this information immediately to all Contracting Parties and to the relevant flag State(s).

**Conservation Measure 119/XVI**[1, 2]

*Requirement for Contracting Parties to License their Flag Vessels in the Convention Area*

The Commission hereby adopts the following Conservation Measure in accordance with Article ix of the Convention:

Each Contracting Party shall prohibit fishing by its flag vessels in the Convention Area except pursuant to a license or permit that the Contracting Party has issued setting forth the specific areas and time periods during which such fishing is authorized and all other specific conditions to which the fishing is subject to give effect to CCAMLR Conservation Measures and requirements under the Convention.

**Conservation Measure 120/XVI**

*Prohibition on Directed Fishing for Dissostichus spp. except in Accordance with Specific Conservation Measures*

The Commission,

Concerned to ensure the regulation of directed fishing for Dissostichus spp. in all statistical areas and subareas in the Convention Area, and

Noting that Conservation Measures in respect of the regulation of Dissostichus spp. have been agreed for all areas except Subarea 48.5 and Divisions 58.4.1 and 58.4.2,

hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

Directed fishing for Dissostichus spp. in Subarea 48.5 and Divisions 58.4.1 and 58.4.2 is prohibited from the close of the 1997 Commission meeting until the close of the 1998 Commission meeting.

**Conservation Measure 121/XVI**[1, 2]

*Monthly Fine-Scale Biological Data Reporting System for Trawl and Longline Fisheries*

This Conservation Measure is adopted in accordance with Conservation Measure 7/V, where appropriate.

This Conservation Measure is invoked by the Conservation Measures to which it is attached.

1. Specification of 'target species' and 'by-catch species' referred to in this Conservation Measure shall be made in the Conservation Measure to which it is attached.

2. At the end of each month each Contracting Party shall obtain from each of its vessels representative samples of length composition measurements of the target species and by-catch species from the fishery (Form B2, latest version). It shall transmit those data in the specified form to the Executive Secretary not later than the end of the following month.

3. For the purpose of implementing this Conservation Measure:

(i) length measurements of fish should be of total length to the nearest centimeter below;

(ii) a representative sample of length composition should be taken from each single fine-scale grid rectangle (0.5° latitude by 1° longitude) in which fishing occurs. In the event that the vessel moves from one fine-scale grid rectangle to another during the course of a month, then a separate length composition should be submitted for each fine-scale grid rectangle.

4. Should a Contracting Party fail to transmit the fine-scale length composition data to the Executive Secretary in the appropriate form by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

[1] Except for waters adjacent to the Prince Edward Islands.

[2] Except for waters adjacent to Kerguelen and Crozet islands.

[1] Except for waters adjacent to Kerguelen and Crozet islands.

[2] Except for waters adjacent to the Prince Edward Islands.

**Conservation Measure 122/XVI**[1,2]

*Monthly Fine-Scale Catch and Effort Data Reporting System for Trawl and Longline Fisheries*

This Conservation Measure is adopted in accordance with Conservation Measure 7/V, where appropriate.

This Conservation Measure is invoked by the Conservation Measures to which it is attached.

1. Specification of 'target species' and 'by-catch species' referred to in this Conservation Measure shall be made in the Conservation Measure to which it is attached.

2. At the end of each month each Contracting Party shall obtain from each of its vessels the data required to complete the CCAMLR fine-scale catch and effort data form (trawl fisheries Form C1, latest version or longline fisheries Form C2, latest version). It shall transmit those data in the specified format to the Executive Secretary not later than the end of the following month.

3. The catch of all target and by-catch species must be reported by species.

4. The numbers of seabirds and marine mammals of each species caught and released or killed must be reported.

5. Should a Contracting Party fail to transmit the fine-scale catch and effort data to the Executive Secretary in the appropriate form by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

**Conservation Measure 123/XVI**

*Limitation of the Total Catch of Champsocephalus gunnari in Statistical Subarea 48.3 in the 1997/98 Season*

The Commission adopted this Conservation Measure in accordance with Conservation Measure 7/v:

1. The total catch of Champsocephalus gunnari in the 1997/98 season shall be limited to 4,520 tons in Statistical Subarea 48.3.

2. The fishery for Champsocephalus gunnari in Statistical Subarea 48.3 shall close if the by-catch of any of the species listed in Conservation Measure 95/xiv reaches its by-catch limit or if the total catch of Champsocephalus gunnari reaches 4,520 tons, whichever comes first.

3. If, in the course of the directed fishery for Champsocephalus gunnari, the by-catch in any one haul of any of the species named in Conservation Measure 95/XIV

- is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- is equal to or greater than 2 tons, then

the fishing vessel shall move to another location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 95/XV exceeded 5% for a period of at least five days. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

4. Where any haul contains more than 100 kg of Champsocephalus gunnari, and more than 10% of the Champsocephalus gunnari by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small Champsocephalus gunnari exceeded 10%, for a period of at least five days. The location where the catch of small Champsocephalus gunnari exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

5. The use of bottom trawls in the directed fishery for Champsocephalus gunnari in Statistical Subarea 48.3 is prohibited.

6. The fishery for Champsocephalus gunnari in Statistical Subarea 48.3 shall be closed from 1 April 1998 until the end of the Commission meeting in 1998.

7. Each vessel participating in the directed fishery for Champsocephalus gunnari in Subarea 48.3 in the 1997/98 season shall have a scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

8. For the purpose of implementing paragraphs 1 and 2 of this Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XiI shall apply in the 1997/98 season; and

(ii) the Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 117B/XV shall apply for Champsocephalus gunnari. Data shall be reported on a haul-by-haul basis.

9. Fine-scale biological data, as required under Conservation Measure 117A/XVI shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

[This provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission. The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.]

**Conservation Measure 124/XVI**

*Limits on the Fishery for Dissostichus eleginoides in Statistical Subarea 48.3 for the 1997/98 Season*

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The total catch of Dissostichus eleginoides in Statistical Subarea 48.3 in the 1997/98 season shall be limited to 3300 tons.

2. For the purposes of the fishery for Dissostichus eleginoides in Statistical Subarea 48.3, the 1997/98 fishing season is defined as the period from 1 April to 31 August 1998, or until the catch limit is reached, whichever is the sooner.

3. Each vessel participating in the Dissostichus eleginoides fishery in Statistical Subarea 48.3 in the 1997/98 season shall have at least one scientific observer, including one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

4. For the purpose of implementing this Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XiI shall apply in the 1997/98 season, commencing on 1 April 1998; and

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 117B/XVI shall apply in the 1997/98 season, commencing on 1 April 1998. Data shall be submitted on a haul-by-haul basis. For the purpose of Conservation Measure 117B/XVI the target species is Dissostichus eleginoides and 'by-catch

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

species' are defined as any species other than Dissostichus eleginoides.

5. Fine-scale biological data, as required under Conservation Measure 117A/XVI shall be collected and recorded. Such data shall be reported in accordance with the System of International Scientific Observation.

6. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for Dissostichus eleginoides in Statistical Subarea 48.3 shall be prohibited.

**Conservation Measure 125/XVI**

*Precautionary Catch Limit for Electrona carlsbergi in Statistical Subarea 48.3 for the 1997/98 Season*

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. For the purposes of this Conservation Measure the fishing season for Electrona carlsbergi is defined as the period from 8 November 1997 to the end of the Commission meeting in 1998.

2. The total catch of Electrona carlsbergi in the 1997/98 season shall be limited to 109,000 tons in Statistical Subarea 48.3.

3. In addition, the total catch of Electrona carlsbergi in the 1997/98 season shall be limited to 14,500 tons in the Shag Rocks region, defined as the area bounded by 52°30′S, 40°W; 52°30′S, 44°W; 54°30′S, 40°W and 54°30′S, 44°W.

4. In the event that the catch of Electrona carlsbergi is expected to exceed 20,000 tons in the 1997/98 season, a survey of stock biomass and age structure shall be conducted during that season by the principal fishing nations involved. A full report of this survey including data on stock biomass (specifically including area surveyed, survey design and density estimates), age structure and the biological characteristics of the by-catch shall be made available in advance for discussion at the 1998 meeting of the Working Group on Fish Stock Assessment.

5. The directed fishery for Electrona carlsbergi in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in Conservation Measure 95/xiv reaches its by-catch limit or if the total catch of Electrona carlsbergi reaches 109,000 tons, whichever comes first.

6. The directed fishery for Electrona carlsbergi in the Shag Rocks region shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of Electrona carlsbergi reaches 14,500 tons, whichever comes first.

7. If, in the course of the directed fishery for Electrona carlsbergi, the by-catch in any one haul of any species other than the target species.

- is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- is equal to or greater than 2 tons, then

the fishing vessel shall move to another fishing location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species, other than the target species, exceeded 5%, for a period of at least five days2. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

8. For the purpose of implementing this Conservation Measure:

(i) the Catch Reporting System set out in Conservation Measure 40/x shall apply in the 1997/98 season; and

(ii) the Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 117B/XVI shall also apply in the 1997/98 season. For the purposes of Conservation Measure 117B/XVI, the target species is Electrona carlsbergi, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than Electrona carlsbergi.

(iii) the Monthly Fine-scale Biological Data Reporting System set out in Conservation Measure A/XVI shall also apply in the 1997/98 season. For the purposes of Conservation Measure 117A/XVI, the target species is Electrona carlsbergi, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than Electrona carlsbergi. For the purposes of paragraph 8(ii) of Conservation Measure 117A/xVI a representative sample shall be a minimum of 500 fish.

[This provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission. The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.]

**Conservation Measure 126/XVI**

*Limits on the Crab Fishery in Statistical Subarea 48.3 in the 1997/98 Season*

The following Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. In Statistical Subarea 48.3, the crab fishing season is defined as the period from 8 November 1997 to end of the Commission meeting in 1998, or until the catch limit is reached, whichever is sooner.

3. The crab fishery shall be limited to one vessel per Member.

4. The total catch of crab from Statistical Subarea 48.3 shall be limited to 1,600 tons during the 1997/98 crab fishing season.

5. Each vessel participating in the crab fishery in Subarea 48.3 in the 1997/98 season shall have a scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

6. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorized to participate in the crab fishery.

7. All vessels fishing for crab shall report the following data to CCAMLR by 31 August 1998 for crabs caught prior to 31 July 1998:

(i) the location, date, depth, fishing effort (number and spacing of pots and soak time), and catch (numbers and weight) of commercially sized crabs (reported on as fine a scale as possible, but no coarser than 0.5° latitude by 1.0° longitude) for each 10-day period;

(ii) the species, size, and sex of a representative subsample of crab sampled according to the procedure set out in Annex 126/A (between 35 and 50 crabs shall be sampled every day from the line hauled just prior to noon) and by-catch caught in traps; and

(iii) other relevant data, as possible, according to the requirements set out in Annex 126/A.

8. For the purposes of implementing this Conservation Measure, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

9. Data on catches taken between 31 July 1998 and 31 August 1998 shall be reported to CCAMLR by 30 September 1998 so that the data will be available to the Working Group on Fish Stock Assessment.

10. Crab fishing gear shall be limited to the use of crab pots (traps). The use of all other methods of catching crabs (e.g., bottom trawls) shall be prohibited.

11. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of Paralomis spinosissima and P. formosa, males with a minimum carapace width of 102 mm and 90 mm, respectively, may be retained in the catch.

12. Crab processed at sea shall be frozen as crab sections (minimum size of crabs can be determined using crab sections).

**Annex 126/A**

**Data Requirements on the Crab Fishery in Statistical Subarea 48.3**

*Catch and Effort Data*

Cruise Descriptions

cruise code, vessel code, permit number, year.

Pot Descriptions

diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions

date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions

retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

*Table 1:* Data requirements for by-catch species in the crab fishery in Statistical Subarea 48.3.

| Species | Data Requirements |
|---|---|
| Dissostichus eleginoides | Numbers and estimated total weight |
| Notothenia rossii | Numbers and estimated total weight |
| Other Species | Estimated total weight |

*Biological Data*

For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions

cruise code, vessel code, permit number.

Sample Descriptions

date, position at start of the set, compass bearing of the set, line number.

Data

species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

**Conservation Measure 127/XVI**

*Prohibition of Directed Fishery on Gobionotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Lepidonotothen squamifrons and Patagonotothen guntheri in Statistical Subarea 48.3 for the 1997/98 Season*

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

Directed fishing on Gobionotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Lepidonotothen squamifrons and Patagonotothen guntheri in Statistical Subarea 48.3 is prohibited in the 1997/98 season, defined as the period from 8 November 1997 to the end of the Commission meeting in 1998.

**Conservation Measure 128/XVI**

*Catch Limit on Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.4 for the 1997/98 Season*

1. The total catch of Dissostichus eleginoides in Statistical Subarea 48.4 in the 1997/98 season shall be limited to 28 tons.

2. Taking of Dissostichus mawsoni, other than for scientific research purposes, is prohibited.

3. For the purposes of the fishery for Dissostichus eleginoides in Statistical Subarea 48.4, the 1997/98 fishing season is defined as the period from 1 April to 31 August 1998, or until the catch limit for Dissostichus eleginoides in Subarea 48.4 is reached, or until the catch limit for Dissostichus eleginoides in Subarea 48.3, as specified in Conservation Measure E/xvi is reached, whichever is sooner.

4. Each vessel participating in the Dissostichus eleginoides fishery in Statistical Subarea 48.4 in the 1997/98 season shall have at least one scientific observer, including one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

5. For the purpose of implementing this Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XiI shall apply in the 1997/98 season, commencing on 1 April 1998; and

(ii) the Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 117B/XVI shall apply in the 1997/98 season, commencing on 1 April 1998. Data shall be reported on a haul-by-haul basis. For the purposes of Conservation Measure 117B/XVI, the target species is Dissostichus eleginoides, and 'by-catch species' are defined as any species other than Dissostichus eleginoides.

6. Fine-scale biological data, as required under Conservation Measure 117A/XVI shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

7. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for Dissostichus eleginoides in Statistical Subarea 48.4 shall be prohibited.

**Conservation Measure 129/XVI**

*Prohibition of Directed Fishing for Lepidonotothen squamifrons in Statistical Division 58.4.4 (Ob and Lena Banks)*

Directed fishing for Lepidonotothen squamifrons, other than for scientific research purposes, is prohibited in Statistical Division 58.4.4 from 8 November 1997 until at least such time that a survey of stock biomass is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

**Conservation Measure 130/XVI** [1, 2, 3]

*Fishery for Champsocephalus gunnari in Statistical Division 58.5.2 in the 1997/98 Fishing Season*

1. The total catch for Champsocephalus gunnari on the Heard Island plateau shall be limited to 900 tons in the 1997/98 fishing season.

[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

[3] As described in Resolution 12/XVI.

2. Fishing shall cease if the by-catch of any of the species listed in Conservation Measure MMM/XVI (other species) reaches its by-catch limit.

3. For the purposes of this Conservation Measure, the Heard Island plateau is defined as that portion of Statistical Division 58.5.2 that lies within the area bounded by the following limits:

(i) starting at the point where the 72°15′E meridian intersects the Australia-France Maritime Delimitation Agreement Boundary southwards to the point 53°25′S:72°15′E;

(ii) then eastwards along the parallel of 53°25′S to 74°00′E;

(iii) then to the point 52°40′S:76°00′E;

(iv) then northwards along the meridian 76°00′E to 52°00′S;

(v) then to the point 51°00′S:74°30′E; and

(vi) then westwards along the parallel of 51°00′S to connect with the starting point.

A chart illustrating the above definition is appended to this Conservation Measure.

4. For the purposes of this fishery on C. gunnari, the 1997/98 fishing season is defined as the period from 8 November 1997 to the end of the Commission meeting in 1998.

5. The catch limit may only be taken by trawling.

6. Where any haul contains more than 100kg of C. gunnari, and more than 10% of the C. gunnari by number are smaller than 240mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant1. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small C. gunnari exceeded 10% for a period of at least five days2. The location where the catch of small C. gunnari exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

7. Each vessel participating in the fishery shall have at least one scientific observer, and include, if available, one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities.

8. Each vessel operating in the C. gunnari fishery in Statistical Division 58.5.2 shall have a VMS3 at all times.

9. A ten-day catch and effort reporting system shall be implemented:

(i) for the purposes of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of C. gunnari and of all by-catch species must be reported;

(v) such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

10. A fine-scale effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) the catch of C. gunnari and all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observers(s) aboard each vessel shall collect data on the length composition from representative samples of C. gunnari and by-catch species:

(a) length measurements shall be to the nearest centimeter below; and

(b) representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) the above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

11. If, in the course of the directed fishery for C. gunnari, the by-catch in any one haul of any one of the species Notothenia rossii, Lepidonotothen squamifrons, Channichthys rhinoceratus or Bathyraja spp. either,

- is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or,
- is equal to, or greater than 2 tons, then

the fishing vessel shall move to another fishing location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 5% for a period of at least five days. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

**Conservation Measure 131/XVI**

*Precautionary Catch Limits on the Fishery for Dissostichus eleginoides in Statistical Division 58.5.2 for the 1997/98 Season*

1. The total catch of Dissostichus eleginoides in Statistical Division 58.5.2 in the 1997/98 season shall be limited to 3700 tons.

2. For the purposes of this Conservation Measure the 1997/98 season is defined as the period from 8 November 1997 until the close of the Commission meeting in 1998.

3. Fishing shall cease if the by-catch of any of the species listed in Conservation Measure 127/XVI (measure for other species) reaches its by-catch limit.

4. The catch limit may only be taken by trawling.

5. Each vessel participating in the Dissostichus eleginoides fishery in Statistical Division 58.5.2 shall have at least one scientific observer and, if available, one appointed in accordance with the CCAMLR Scheme of International Scientific Observation on board throughout all fishing activities.

6. Each vessel operating in the Dissostichus eleginoides fishery in Statistical Division 58.5.2 shall have a VMS1 at all times.

7. A ten-day catch and effort reporting system shall be implemented:

(i) for the purpose of implementing this system, the calendar month shall be divided into three reporting periods: day 1 to day 10, day 11 to day 20, day

21 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels its total catch and total days and hours fished for the period and shall, by electronic transmission, cable, telex or facsimile, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of Dissostichus eleginoides and by-catch species must be reported;

(v) such reports will specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

8. A fine-scale effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) the catch of Dissostichus eleginoides and all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of Dissostichus eleginoides and by-catch species:

(a) length measurements shall be to the nearest centimeter below; and

(b) representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month.

The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

9. If in the course of a directed fishery for Dissostichus eleginoides, the by-catch in any one haul of the species Lepidonotothen squamifrons, Notothenia rossii, Channichthys rhinoceratus or Bathyraja spp. either,

(i) is greater than 100 kgs and exceeds 5% of the total catch of fish species by weight, or,

(ii) is equal to, or greater than 2 tons, then

the fishing vessel shall move to another fishing location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 5% for a period of at least five days. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

10. The total number and weight of Dissostichus eleginoides discarded, including those with the jellymeat condition, shall be reported. These fish will count towards the total allowable catch.

[As described in Resolution 12/XVI, this provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission. The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.]

**Conservation Measure 132/XVI**

*Limitation of the Catch of Lepidonotothen squamifrons, Notothenia rossii, Channichthys rhinoceratus and Bathyraja spp. and other Species in Statistical Division 58.5.2 in the 1997/98 Fishing Season*

1. There shall be no directed fishing for Lepidonotothen squamifrons, Notothenia rossii, Channichthys rhinoceratus or Bathyraja spp. in Statistical Division 58.5.2 in the 1997/98 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 1997/98 fishing season, the by-catch of Lepidonotothen squamifrons shall not exceed 325 tons; the by-catch of Channichthys rhinoceratus shall not exceed 80 tons; and the by-catch of Bathyraja spp. shall not exceed 120 tons.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tons in Statistical Division 58.5.2.

**Conservation Measure 133/XVI**[1,2]

*General Measures for New and Exploratory Longline Fisheries for Dissostichus spp. in the Convention Area for the 1997/98 Season*

The Commission,

Noting the need for the distribution of fishing effort and appropriate catch levels in fine-scale rectangles in these new fisheries,

Adopts the following Conservation Measure:

1. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any fine-scale rectangle shall cease when the reported catch reaches 100 tons and that rectangle shall be closed to fishing for the remainder of the season. Fishing in any fine-scale rectangle shall be restricted to one vessel at any one time.

2. In order to give effect to paragraph 1 above:

(i) the precise geographic position of the mid-point between the start and end of the longline shall be determined using appropriate means;

(ii) catch and effort information for each species by fine-scale rectangle shall be reported to the Executive Secretary every five days using the Five-Day Catch and Effort Reporting System set out in Conservation Measure 51/XII; and

(iii) the Secretariat shall notify Contracting Parties participating in these fisheries when the total longline catch for Dissostichus eleginoides and D. mawsoni combined in any fine-scale rectangle exceeds 100 tons.

3. The by-catch of any species in the new and exploratory fisheries other than Dissostichus spp. in the Statistical Subareas and Divisions concerned shall be limited to 50 tons.

4. The total number and weight of Dissostichus eleginoides and D. mawsoni discarded, including those

[1] Except for waters adjacent to Kerguelen and Crozet and Prince Edward Islands.

[2] A fine-scale rectangle is defined as an area of 0.5° latitude by 1° longitude with respect to the northwest corner of the Statistical Subarea or Division. The identification of each rectangle is by the latitude of its northernmost boundary and the longitude of the boundary closest to 0°.

with the ''jellymeat'' condition, shall be reported.

5. Each vessel participating in the new and exploratory fisheries for Dissostichus spp. during the 1997/98 season shall have on board at least one scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, throughout all fishing activities within the fishing season.

6. The data collection plan (Annex 133/A to Conservation Measures in Force) shall be implemented. Data collected pursuant to the plan for the period up to 31 August 1998 shall be reported to CCAMLR by 30 September 1998 so that the data will be available to the 1998 meeting of the Working Group on Fish Stock Assessment. Such data taken after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery.

**Annex 133/A**

*Data Collection Plan for New and Exploratory Longline Fisheries*

1. All vessels will comply with conditions set by CCAMLR. These include five-day catch and effort reporting system (Conservation Measure 51/XII) and monthly fine-scale effort and biological data reporting system (Conservation Measures A/XVI and b/xvi) will be followed.

2. All data required by the CCAMLR Scientific Observers Manual for fin fisheries will be collected. These include:

(i) haul-by-haul catch and catch per effort by species;

(ii) haul-by-haul length frequency of common species;

(iii) sex and gonad state of common species;

(iv) diet and stomach fullness;

(v) scales and/or otoliths for age determination;

(vi) by-catch of fish and other organisms; and

(vii) observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) number of fish lost at surface;

(ii) number of hooks set;

(iii) bait type;

(iv) baiting success (%);

(v) hook type;

(vi) setting, soak, and hauling times;

(vii) sea depth at each end of line on hauling; and

(viii) bottom type.

**Conservation Measure 134/XVI**

*New Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.1 in the 1997/98 Season*

The Commission,

Welcoming the notification of Chile of its intention to conduct a new fishery in Statistical Subarea 48.1 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.1 shall be limited to the new fishery by Chile. The fishery shall be conducted by Chilean flagged vessels using longlining only.

2. The precautionary catch for Subarea 48.1 shall be limited to 1 863 tons of Dissostichus spp. north of 65°S and 94 tons of Dissostichus spp. south of 65°S. In the event that these limits are reached, the fishery shall be closed.

3. For the purpose of this new fishery, the fishing season is defined as the period from 1 April until 31 August 19981.

4.The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new fishery will be required to operate VMS2 at all times.

However, a first prospective cruise will be carried out between 15 February until 31 March 1998, as described in Resolution 12/XVI.

**Conservation Measure 135/XVI**

*New Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.2 in the 1997/98 Season*

The Commission,

Welcoming the notification of Chile of its intention to conduct a new fishery in Statistical Subarea 48.2 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.2 shall be limited to the new fishery by Chile. The fishery shall be conducted by Chilean flagged vessels using longlining only.

2. The precautionary catch for Subarea 48.2 shall be limited to 429 tons of Dissostichus supp. north of 60°S and 972 tons of Dissostichus spp. south of 60°S. In the event that these limits are reached, the fishery shall be closed.

3. For the purpose of this new fishery, the fishing season is defined as the period from 1 April until 31 August 1998.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new fishery will be required to operate VMS2 at all times.

However, a first prospective cruise will be carried out between 15 February until 31 March 1998, as described in Resolution 12/XVI.

**Conservation Measure 136/XVI**

*New Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.6 in the 1997/98 Season*

The Commission,

Welcoming the notification of Norway and South Africa of its intention to conduct new fishery in Statistical Subarea 48.6 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.6 shall be limited to the new fisheries by Norway and South Africa. The fisheries shall be conducted by Norwegian and South African flagged vessels using longlining only.

2. The precautionary catch for Subarea 48.6 shall be limited to 888 tons of Dissostichus spp. north of 65°S and 648 tons of Dissostichus spp. south of 65°S. In the event that these limits are reached, the fisheries shall be closed.

3. For the purpose of these new fisheries, the fishing season to the north of 60°S is defined as the period from 1 March until 31 August 1998. The fishing season south of 60°S is defined as the period from 15 February until 15 October 1998.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new fisheries will be required to operate VMS1 at all times.

As described in Resolution 12/XVI

**Conservation Measure 137/XVI**

*New Longline Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Division 58.4.3 in the 1997/98 Season*

The Commission,

Welcoming the notification of South Africa of its intention to conduct a new

longline fishery in Statistical Division 58.4.3 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Division 58.4.3 shall be limited to the new fishery by South Africa. The fishery shall be conducted by South African flagged vessels using longlining only.

2. The precautionary catch for Division 58.4.3 shall be limited to 1 782 tons of Dissostichus spp. north of 60°S, to be taken by longline. In the event that this limit is reached, the longline fishery shall be closed. served

3. For the purpose of this new longline fishery, the fishing season is defined as the period from 1 April until 31 August 1998.

4. The directed longline fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new longline fishery will be required to operate VMS1 at all times.

[As described in Resolution 12/XVI]

**Conservation Measure 138/XVI**

*New Fisheries for Dissostichus eleginoides in Statistical Division 58.4.4 in the 1997/98 Season*

The Commission,

Welcoming the notification of South Africa and Ukraine of its intention to conduct new fisheries in Statistical Division 58.4.4 for Dissostichus eleginoides in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides in Statistical Division 58.4.4 shall be limited to the new fisheries by South Africa and Ukraine. The fisheries shall be conducted by South African and Ukrainian flagged vessels using longlining only.

2. The precautionary catch for Division 58.4.4 shall be limited to 580 tons of Dissostichus spp. north of 60°S, to be taken by longline. In the event that this limit is reached, the fisheries shall be closed.

3. For the purpose of these new fisheries, the fishing season is defined as the period from 1 April until 31 August 1998.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

[Except for waters adjacent to the Prince Edward Islands]

**Conservation Measure 139/XVI**

*New Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.2 in the 1997/98 Season*

The Commission,

Welcoming the notification of New Zealand of its intention to conduct a new fishery in Statistical Subarea 88.2 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.2 shall be limited to the new fishery by New Zealand. The fishery shall be conducted by New Zealand flagged vessels using longlining only.

2. The precautionary catch for Subarea 88.2 shall be limited to 25 tons of Dissostichus spp. north of 65°S and 38 tons of Dissostichus spp. south of 65°S. In the event that these limits are reached, the fishery shall be closed.

3. For the purpose of this new fishery, the fishing season is defined as the period from 15 February until 31 August 1998.

4. The directed fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new fishery will be required to operate VMS1 at all times.

As described in Resolution 12/XVI

**Conservation Measure 140/XVI**

*New Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.3 in the 1997/98 Season*

The Commission,

Welcoming the notification of Chile of its intention to conduct a new fishery in Statistical Subarea 88.3 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.3 shall be limited to the new fishery by Chile. The fishery shall be conducted by Chilean flagged vessels using longlining only.

2. The precautionary catch for Subarea 88.3 shall be limited to 455 tons of Dissostichus spp. south of 65°S. In the event that this limit is reached, the fishery shall be closed.

3. For the purpose of this new fishery, the fishing season is defined as the period from 15 February until 31 October 19981.

4. The directed fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new fishery will be required to operate VMS2 at all times.

[A first prospective cruise will be carried out between 15 February until 31 March 1998, as described in Resolution 12/XVI.]

**Conservation Measure 141/XVI [1,2]**

*Exploratory Fisheries for Dissostichus eleginoides in Statistical Subarea 58.6 in the 1997/98 Season*

The Commission adopts the following Conservation Measure in accordance with Conservation Measure 65/XII:

1. Fishing for Dissostichus eleginoides in Statistical Subarea 58.6 shall be limited to the exploratory fisheries by Russia, South Africa and Ukraine. The fisheries shall be conducted by no more than two flagged vessels of each of these Contracting Parties using longlining only.

2. The precautionary catch limit for these exploratory fisheries in Statistical Subarea 58.6 shall be limited to 658 tons of Dissostichus eleginoides. In the event that the catch by these vessels reaches the catch limit, the fisheries shall be closed.

3. For the purpose of these exploratory fisheries, the fishing season is defined as the period from 1 April until 31 August 1998.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

**Conservation Measure 142/XVI [1]**

*Exploratory Fisheries for Dissostichus eleginoides in Statistical Subarea 58.7 in the 1997/98 Season*

The Commission adopts the following Conservation Measure in accordance with Conservation Measure 65/XII:

1. Fishing for Dissostichus eleginoides in Statistical Subarea 58.7 shall be limited to the exploratory fisheries by Russia, South Africa and Ukraine. The fisheries shall be conducted by one flagged vessel of each of these Contracting Parties using longlining only.

2. The precautionary catch limit for these exploratory fisheries in Statistical Subarea 58.7 shall be limited to 312 tons of Dissostichus eleginoides. In the event

[1] Except for waters adjacent to the Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[1] Except for waters adjacent to the Prince Edward Islands.

that the catch by these vessels reaches the catch limit, the fisheries shall be closed.

3. For the purpose of these exploratory fisheries, the fishing season is defined as the period from 1 April until 31 August 1998.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

**Conservation Measure 143/XVI**

*Exploratory Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.1 in the 1997/98 Season*

The Commission adopts the following Conservation Measure in accordance with Conservation Measure 65/XII:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.1 shall be limited to the exploratory fishery by New Zealand. The fishery shall be conducted by New Zealand flagged vessels using longlining only.

2. The precautionary catch for Subarea 88.1 shall be limited to 338 tons of Dissostichus spp. north of 65°S and 1,172 tons of Dissostichus spp. south of 65°S. In the event that these limits are reached, the fishery shall be closed.

3. For the purpose of this exploratory fishery, the fishing season is defined as the period from 15 February until 31 August 1998.

4. The directed fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the exploratory fishery will be required to operate VMS1 at all times.

[As described in Resolution 12/XVI]

**Conservation Measure 144/XVI**

*Exploratory Fishery for Dissostichus spp. taken by the Trawl Method in Statistical Division 58.4.3 in the 1997/98 Season*

The Commission, adopts the following Conservation measure in accordance with Conservation Measure 65/XII:

1. Fishing for Dissostichus spp. by trawl in Statistical Division 58.4.3 north of 60°S shall be limited to the exploratory fishery by Australian flagged vessels only. The total catch of Dissostichus spp. in the 1997/98 season shall not exceed 963 tons taken by the trawl method.

2. For the purposes of this Conservation Measure the 1997/98 season is defined as the period from 8 November 1997 and finishes at the close of the Commission meeting in 1998 or when the catch limit is reached, whichever is the sooner.

3. Each vessel participating in the exploratory fishery for Dissostichus spp. in Statistical Division 58.4.3 shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation on board throughout all fishing activities within the Division.

4. Each vessel operating in the exploratory fishery for Dissostichus spp. in Statistical Division 58.4.3 shall have a VMS1 at all times.

5. For the purpose of implementing this Conservation Measure:

(i) the five-day catch and effort Reporting System set out in Conservation Measure 51/XII;

(ii) the monthly Fine-Scale Biological Data as required under Conservation Measure 117A/XVI, shall be recorded and reported in accordance with the System of International Scientific Observation;

shall apply.

6. If in the course of a directed fishery for Dissostichus spp., the by-catch in any one haul of the species Lepidonotothen squamifrons, Notothenia rossii, Channichthys rhinoceratus or Bathyraja spp. either,

(i) is greater than 100 kgs and exceeds 5% of the total catch of fish species by weight; or,

(ii) is equal to, or greater than 2 tons, then

the fishing vessel shall move to another fishing location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 5% for a period of at least five days. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

7. The total number and weight of Dissostichus spp. discarded, including those with the jellymeat condition, shall be reported. These fish will count towards the total allowable catch.

8. The data collection plan in Annex 144/A will be implemented and the results reported to CCAMLR not later than three months after the closure of the fishery.

[As described in Resolution 12/XVI, this provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission. The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.]

**Annex 144/A**

*Research and Fishery Operations Plan*

During the early stages of exploratory fishing on the Elan and BANZARE Banks, subject to the TACs set by CCAMLR, Australian vessels will conduct a trawl survey to assess the biomass of commercially important species on each of the banks down to 1,500 m depth. Exploration and surveys might not occur on both banks in the same season, but commercial exploration will not occur unless a survey is conducted at the same time. The survey, once commenced, will be completed in as short a time period as possible.

The survey on each bank will comprise 40 hauls at randomly chosen positions. Because the suitability of the bottom on these banks for fishing is not well known, and even the positions of some parts of the banks are not precisely known, it is likely that a high proportion of the sites will be unsuitable for trawling. To make the survey as practicable as possible, the ground shallower than 1500m on each bank has been divided into just over 40 squares, each of 15 n miles square for Elan Bank and 25 n miles square for BANZARE Bank (Figures 1 and 2). Within each square, five randomly chosen trawling positions have been nominated (Tables 1 and 2), and the vessel will trawl at one of the five positions in each square. If no nominated trawl position in a square is suitable, then that square will be abandoned. More accurate charts of these areas will be available soon, and it may be necessary to alter the positions of the sampling squares.

*Permit Conditions and Data Collection Plan*

The vessels will comply with all express and implied conditions set by CCAMLR. General conditions include 120 mm minimum mesh size (Conservation Measure 2/III), and no net monitor cables to be used (Conservation Measure 30/X). The five-day catch and effort reporting system and the monthly effort and biological data reporting required by Conservation Measure 78/XIV will also apply in Division 58.4.3.

In addition to conditions set by CCAMLR, the Australian Fisheries Management Authority will require that the vessels carry an operating Vessel Monitoring System which will enable AFMA to know its position at any time.

An inspector/scientific observer will also be aboard all vessels at all times to monitor activities and catches and to collect biological data.

The following data and material will be collected from both the survey and commercial fishing operations, as required by the CCAMLR Scientific Observers Manual for fin fisheries:

Haul-by-haul catch and catch per effort by species
Haul-by-haul length frequency of common species
Sex and gonad state of common species
Diet and stomach fullness
Scales and/or otoliths for age determination
By-catch of fish and other organisms
Observations on the occurrence of seabirds and mammals in relation to fishing operations, and details of any incidental mortality of these animals.

**Conservation Measure 145/XVI**

*Exploratory Fishery for Martialia hyadesi in Statistical Subarea 48.3 in the 1997/98 Season*

The Commission,

Adopts the following Conservation Measure in accordance with Conservation Measures 7/v and 65/XII:

1. Fishing for Martialia hyadesi in Statistical Subarea 48.3 shall be limited to the exploratory fishery by flagged vessels of the Republic of Korea and the U.K. The catch shall be limited to 2500 tons.

2. For the purposes of this fishery, the fishing season is defined as the period between 8 November 1997 and the end of the Commission meeting in 1998 or until the catch limit is reached, whichever is sooner.

3. For the purposes of implementing this Conservation Measure:

(i) the Ten-day Catch and Effort Reporting System, as set out in Conservation Measure 61/xii shall apply;

(ii) the data required to complete the CCAMLR standard fine-scale catch and effort data form for squid jig fisheries (Form C3) shall be reported from each vessel. These data shall include numbers of seabirds and marine mammals of each species caught and released or killed. These data shall be reported to CCAMLR by 31 August 1998 for catches taken prior to 31 July 1998; and

(iii) data on catches taken between 31 July 1998 and 31 August 1998 shall be reported to CCAMLR by 30 September 1998 so that the data will be available to the 1998 meeting of the Working Group on Fish Stock Assessment.

4. Each vessel participating in the fishery for Martialia hyadesi during the 1997/98 season shall have a scientific observer on board appointed in accordance with the CCAMLR Scheme of International Scientific Observation.

5. The data collection plan (Annex 145/A) shall be implemented. Data collected pursuant to the plan for the period up to 31 August 1998 shall be reported to CCAMLR by 30 September 1998 so that the data will be available to the 1998 meeting of the Working Group on Fish Stock Assessment. Such data taken after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery.

**Annex 145/A**

*Data collection Plan for Exploratory Squid (M. hyadesi) Fisheries in Subarea 48.3*

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 61/XII; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3, version 3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR Scientific Observers Manual for squid fisheries will be collected. These include:

(i) vessel and observer program details (Form S1);

(ii) catch information (Form S2); and

(iii) biological data (Form S3).

**Resolution 12/XVI**

*Automated Satellite-Linked Vessel Monitoring Systems (VMSs)* [1]

The Commission,

Noting the extreme concern over high levels of illegal, unregulated and unreported fishing for Dissostichus eleginoides and other marine living resources,

Considers that:

1. Subject to paragraphs 2 and 3, Members shall endeavour, by the end of the Commission meeting in 1998, to establish an automated vessel monitoring system (VMS) to monitor the position of its flag vessels licensed or permitted in accordance with Conservation Measure B(SCOI)/XVI to harvest Dissostichus species or other marine living resources in the Convention Area for which catch limits, fishing seasons or area restrictions have been set by Conservation Measures adopted by the Commission.

2. Any Member not in a position to establish a VMS by the date specified in paragraph 1 shall so inform the CCAMLR Secretariat in advance of the 1998 annual meeting and, if possible, notify its intended alternative timetable for the implementation of a VMS.

3. The implementation of VMS on vessels while participating in the krill fishery is not currently necessary.

4. Once its VMS is established, each Member should monitor the position of its Flag vessels licensed or permitted in accordance with Conservation Measure B(SCOI)/XVI. Should the VMS cease to transmit, the member should take immediate steps to ensure that the transmission is swiftly restored.

5. Members should report to the Secretariat before the start of the annual meeting of the Commission on:

(i) any VMS in operation, including its technical details; and

(ii) in accordance with paragraph XI of the System of Inspection, all cases where they have determined with the assistance of VMS that vessels of their flag had fished in the Convention Area in possible contravention of CCAMLR Conservation Measures.

Dated: January 15, 1998.

**Raymond V. Arnaudo,**

*Deputy Director, Office of Oceans Affairs.*

[FR Doc. 98–2127 Filed 2–2–98; 8:45 am]

BILLING CODE 4710–09–P

[1] For this purpose, VMS means a system where, inter alia:

(i) information collected shall include the vessel identifier, location, date and time, which shall be collected with a required frequency to ensure that the member can effectively monitor its vessel; and

(ii) performance standards shall, at a minimum, include a system that:

(a) is tamper proof;

(b) is fully automatic and operational at all times regardless of environment conditions;

(c) provides real time data; and

(d) provides latitude and longitude with a position accuracy of 500 m or better, with the format to be determined by the Flag State.

## OFFICE OF THE UNITED STATE TRADE REPRESENTATIVE

### Identification of Countries Under Section 182 of the Trade Act of 1974; Request for Public Comment

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for written submissions from the public.

**SUMMARY:** Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and

equitable market access to U.S. persons who rely on intellectual property protection. (Section 192 is commonly referred to as the ''Special 301'' provisions in the Trade Act.) In addition, the USTR is required to determine which of these countries should be identified as priority foreign countries. Acts, policies or practices which are the basis of a country's identification as a priority foreign country are normally the subject of an investigation under the Section 301 provisions of the Trade Act. Section 182 of the Trade Act contains a special rule for the identification of actions by Canada affecting United States cultural industries.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under Section 182 of the Trade Act.

**DATES:** Submissions must be received on or before 12:00 noon on Monday, February 23, 1998.

**ADDRESSES:** Submissions should be sent to Sylvia Harrison, Special Assistant to the Section 301 Committee, Room 416, 600 17th Street, NW., Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Claude Burcky, Director for Intellectual Property (202) 395–6864; Steve Fox, Deputy Director for Intellectual Property (202) 395–6864, or Geralyn S. Ritter, Associate General Counsel (202) 395–6800, Office of the United States Trade Representative.

**SUPPLEMENTARY INFORMATION:** Purusant to Section 182 of the Trade Act, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as priority foreign countries. Acts, policies or practices which are the basis of a country's designation as a priority foreign country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

USTR may not identify a country as a priority foreign country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

Section 182 contains a special rule regarding actions of Canada affecting United States cultural industries. The USTR is obligated to identify any act, policy or practice of Canada which affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). Any such act, policy or practice so identified shall be treated the same as an act, policy or practice which was the basis for a country's identification as a priority foreign country under Section 182(a)(2) of the Trade Act (i.e., such acts, policies or practices shall be the subject of a Section 301 investigation under the ''Special 301'' procedures), unless the United States has already taken action pursuant to Article 2106 of the NAFTA.

USTR must make the above-referenced identifications within 30 days after publication of the National Trade Estimate (NTE) report, i.e., no later than April 30, 1998.

**Requirements for Submissions**

Submissions should include a description of the problems experienced and the effect of the acts, policies and practices on U.S. industry. Submissions should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies and practices. Any submissions that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be sent to Sybia Harrison, Special Assistant to the Section 301 Committee, Room 416, 600 17th Street, N.W., Washington, D.C. 20508, no later than 12:00 noon on Monday, February 23, 1998. Because submissions will be placed in a file open to public inspections at USTR, business-confidential information should not be submitted.

**Public Inspection of Submissions**

Within one business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

**Joseph Papovich,**

*Assistant USTR for Services, Investment and Intellectual Property.*

[FR Doc. 98–2596 Filed 2–2–98; 8:45 am]

BILLING CODE 3190–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/D–16]**

### WTO Dispute Settlement Proceedings: Ireland—Measures Affecting the Grant of Copyright and Neighboring Rights, and European Communities—Measures Affecting the Grant of Copyright and Neighboring Rights

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that the United States has requested the establishment of a dispute settlement panel under the Agreement Establishing the World Trade Organization, to examine whether the legal regime in Ireland complies with the obligations in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). USTR also invites written comments from the public concerning the issues raised in these disputes.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before February 20, 1998, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

**ADDRESSES:** Comments may be submitted to Greg Gerdes, Office of Monitoring and Enforcement, Room 501, Attn: Ireland TRIPS Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Claude Burcky, Director for Intellectual Property (202) 395–6864, or Geralyn S. Ritter, Associate General Counsel, (202) 395–6800, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

**SUPPLEMENTARY INFORMATION:** On January 9, 1998, the United States formally requested establishment of a WTO dispute settlement panel to examine whether the legal regime in

Ireland is inconsistent with the obligations of the TRIPS Agreement. The WTO Dispute Settlement Body (DSB) considered the U.S. request at its meeting on January 22, 1998. Under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, the DSB must establish a panel at the next DSB meeting where this request is on the agenda, unless the DSB determines by consensus otherwise. Under normal circumstances, the panel would be expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

**Major Issues Raised by the United States and Legal Basis of Complaints**

In separate cases filed against Ireland and the European Communities, the United States has requested the establishment of a panel to examine whether the legal regime in Ireland fails to conform to the obligations in Articles 9, 13, 14, 41, 42, 43, 44, 45, 46, 47, 48, 61, 63, 65 and 70 of the TRIPS Agreement.

All developed country Members of the World Trade Organization (''WTO'') are currently obligated to provide copyright and neigbouring rights in accordance with Section 1 of Part II, and the related provisions in Article 70, of the TRIPS Agreement. Such Members are also obligated to comply with the enforcement provisions in Sections 1, 2 and 5 of Part III of the TRIPS Agreement.

Ireland and the European Communities were obligated to implement the provisions of the TRIPS Agreement as of January 1, 1996. The legal regime in Ireland, however, does not comply fully with the obligations described in Articles 9, 13, 14, 41, 42, 43, 44, 45, 46, 47, 48, 61, 65 and 70. In addition, to the extent that Ireland and the European Communities have adopted measures to implement Articles 9, 13, 14, 41, 42, 43, 44, 45, 46, 47, 48, 61, 65 and 70 of the TRIPS Agreement, but have not published such measures or notified them to the Council for TRIPS, they have failed to comply with Article 63 of the TRIPS Agreement.

Article 9 of the TRIPS Agreement establishes the relationship of the TRIPS Agreement to the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works of 24 July 1971 (''Berne Convention''), and requires that Members comply with Articles 1 through 21 of the Berne Convention and the Appendix thereto, with the exception of Article 6*bis* of that Convention. The legal regime in Ireland fails to comply with Article 9 of the TRIPS Agreement because it is inconsistent with the Berne Convention in various respects. For example, the legal regime in Ireland does not cover translations of official works, protection of architectural works, anonymous and pseudonymous works, and ownership of rights in film.

Under the TRIPS Agreement, Members must confine limitations and exceptions to exclusive rights required under Section 1 of Part II ''to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonable prejudice the legitimate interests of the right holder.'' Under the legal regime in Ireland, the exceptions to right holders' exclusive rights exceed those permissible under Article 13 of the TRIPS Agreement.

In Article 14, the TRIPS Agreement contains requirements regarding the grant of rental rights to producers of phonograms and any other right holder in phonograms. The legal regime in Ireland is not consistent with this provision.

The legal regime in Ireland does not provide civil remedies with respect to the unauthorized making of phonograms or cinematographic films from a performance and the unauthorized broadcast of such performance. The legal regime in Ireland is thus inconsistent with Sections 1 and 2 of Part III of the TRIPS Agreement.

Under article 61 of the Trips Agreement, Members must provide for criminal procedures and penalties to be applied in cases of copyright piracy on a commercial scale. Remedies available must include ''imprisonment and/or monetary fines sufficient to provide a deterrent * * *.'' Under Article 41 of the TRIPS Agreement, Members must ensure that the enforcement procedures specified in the Agreement are available under their law so as to ''permit effective action against any act of infringement of intellectual property rights'' covered by the TRIPS Agreement, including ''remedies which constitute a deterrent to further infringements.'' The criminal fines and terms of imprisonment available under the legal regime in Ireland are insufficient to provide an effective deterrent against copyright piracy in Ireland.

The legal regime in Ireland also does not provide adequate protection to pre-existing works, phonograms, and performances for a full term of protection. In this respect, the legal regime in Ireland is inconsistent with Articles 9, 12, 14 and 70 of the TRIPS Agreement.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copes. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate that information or advice;

(2) must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.s. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–16 (''Ireland/EC TRIPS Implementation'') may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

**Amelia Porges,**

*Senior Counsel for Dispute Settlement.*

[FR Doc. 98–2595 Filed 2–2–98; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CDG 98–002]**

### Merchant Marine Personnel Advisory Committee; Request for Applications

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for applications.

**SUMMARY:** The Coast Guard is seeking applicants to serve on the Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC is a 19-member Federal Advisory Committee appointed by the Secretary of Transportation to advise the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

**DATES:** Membership applications should be received no later than April 6, 1998.

**ADDRESSES:** Persons interested in serving on MERPAC may obtain an application form by writing to Commandant (G–MSO–1), U.S. Coast Guard, 2100 2nd St., SW., Washington, DC 20593–0001, or by calling (800) 842–8740 ext. 7–6890, between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Requests for application forms may also be faxed to (202) 267–4570.

**FOR FURTHER INFORMATION CONTACT:** Commander Steven J. Boyle, Executive Director, or Mr. Mark Gould, Assistant Executive Director, at the above address or by telephone at (202) 267–0214.

**SUPPLEMENTARY INFORMATION:** MERPAC is chartered under the Federal Advisory Committee Act (5 U.S.C. App. 2) to advise the Coast Guard on merchant marine personnel issues such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, types of marine simulation utilized in lieu of sea service for marine licenses, and regional examination center activities. Seven current appointments expire in January 1998.

Applicants with one or more of the following backgrounds are needed to fill the positions:

(a) Deck officer.

(b) Three marine educator representatives.

(c) Engineering officer.

(d) Public representative.

(e) Unlicensed engineer.

The membership term is 3 years. No member may hold more than two consecutive 3-year terms.

To achieve the desired balance of membership, the Coast Guard is especially interested in receiving applications from minorities, women, and persons with disabilities. The members of the Committee serve without compensation from the Federal Government; however, travel reimbursement and per diem will be provided. The MERPAC Committee normally meets twice a year, once in Washington, DC, and once elsewhere in the country. Working group meetings may be authorized for specific problems as required.

Applicants may be required to complete an Executive Branch Confidential Financial Disclosure Report (SF 450).

**Joseph J. Angelo,**

*Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 98–2590 Filed 2–2–98; 8:45 am]

**BILLING CODE 4910–14–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–97–66]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before February 23, 1998.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Tawana Matthews (202) 267–9783 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 29, 1998.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

### Petition for Exemption

*Docket No.:* 28824.

*Petitioner:* Triad International Maintenance Corporation.

*Regulations Affected:* 25.807(c)(1).

*Description of Petition:* To exempt TIMCO from the requirements of 14 CFR 25.807(c)(1) to permit the deactivation of the R–1 passenger emergency exit of a Boeing 767–200 Freighter aircraft.

*Docket No.:* 29096.

*Petitioner:* Guam Institute of Aviation Technology.

*Sections of the FAR Affected:* 14 CFR 147.31(c)(1).

*Description of Relief Sought:* To permit the petitioner to credit a student with instruction or previous experience that was not completed at an accredited university, college, or junior college, an accredited vocational, technical, trade, or high school; a military technical school; or a certificated aviation maintenance technical school.

*Docket No.:* 29075.

*Petitioner:* Mercy Medical Center Redding.

*Sections of the FAR Affected:* 14 CFR 135.213(a).

*Description of Relief Sought:* To permit the petitioner to conduct fixed-wing emergency medical system departures under instrument flight rules in weather that is at or above visual flight rules minimums from airports at which a weather report is not available from the U.S. National Weather Service (NWS), a source approved by the NWS, or a source approved by the FAA Administrator.

*Docket No.:* 29051.
*Petitioner:* AOPA Air Safety Foundation.
*Sections of the FAR Affected:* 14 CFR 61.197(a)(2)(iii).
*Description of Relief Sought:* To permit graduates of Federal Aviation Administration approved flight instructor refresher courses to renew their flight instructor certificates more than 90 days before their expiration month.

**Dispositions of Petitions**

*Docket No.:* 29046.
*Petitioner:* Hiller Aircraft Corporation.
*Sections of the FAR Affected:* 14 CFR 47.65.
*Description of Relief Sought/ Disposition:* To permit petitioner to obtain a Dealer's Aircraft Registration Certificate without meeting the United States citizenship requirements. *GRANT, January 15, 1998, Exemption No. 6717.*

*Docket No.:* 29058.
*Petitioner:* John Leo Heverling.
*Sections of the FAR Affected:* 14 CFR 91.109 (a) and (b)(3).
*Description of Relief Sought/ Disposition:* To permit petitioner to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *GRANT, January 15, 1998, Exemption No. 6719.*

*Docket No.:* 29011.
*Petitioner:* Atlantic Coast Airlines.
*Sections of the FAR Affected:* 14 CFR 61.57(e), 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1), and appendix F.
*Description of Relief Sought/ Disposition:* To permit the petitioner to conduct an FAA-monitored training program under which Atlantic Coast Airlines pilots in command and seconds in command meet ground and flight recurrent training and proficiency check requirements through a single visit training program. *GRANT, January 15, 1998, Exemption No. 5783D.*

*Docket No.:* 29076.
*Petitioner:* Million Air.
*Sections of the FAR Affected:* 14 CFR 135.143(c).
*Description of Relief Sought/ Disposition:* To permit the petitioner to operate its Hawker aircraft (Registration No. N745TS, Serial No. NA.745) without a TSO–C112 (Mode S) transponder installed. *GRANT, January 15, 1998, Exemption No. 6718.*

*Docket No.:* 27122.
*Petitioner:* Air Tractor, Inc.
*Sections of the FAR Affected:* 14 CFR 61.31(a)(1).
*Description of Relief Sought/ Disposition:* To permit Air Tractor and pilots of Air Tractor AT–802 and AT–802A airplanes to operate those airplanes without holding a type rating, although the maximum gross weight of the airplanes exceeds 12,500 pounds. *GRANT, January 15, 1998, Exemption No. 5651D.*

*Docket No.:* 27052.
*Petitioner:* Petroleum Helicopters, Inc.
*Sections of the FAR Affected:* 14 CFR 135.143(c).
*Description of Relief Sought/ Disposition:* To permit the petitioner to operate its Bell Model 206L–1 helicopters (Registration Nos. N2761X, N5005B, N50182, and N50046, and Serial Nos. 45283, 45175, 45242, and 45173, respectively) without having a TSO–C112 (Mode S) transponder installed on those aircraft. *GRANT, January 15, 1998, Exemption No. 5586B.*

*Docket No.:* 28964.
*Petitioner:* Raytheon Aircraft Company.
*Sections of the FAR Affected:* 14 CFR 21.325(b)(1).
*Description of Relief Sought/ Disposition:* To permit the petitioner to obtain export airworthiness approvals for parts that were manufactured or located outside of the United States. *GRANT, December 31, 1998, Exemption No. 6720.*

*Docket No.:* 29059.
*Petitioner:* Trans West Air Services, Inc.,
*Sections of the FAR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit the petitioner to operate its Aerospatiale SA–365N2 Dauphin helicopter (Registration No. N886TW, Serial No. 6413) without a TSO–C112 (Mode S) transponder installed. *GRANT, January 6, 1998, Exemption No. 6716.*

*Docket No.:* 26669.
*Petitioner:* Evergreen International Airlines, Inc.
*Sections of the FAR Affected:* 14 CFR 121.583(a)(8).
*Description of Relief Sought/ Disposition:* To permit up to three dependents of Evergreen employees, who are accompanied by an employee sponsor traveling on official business only and are trained and qualified in the operation of emergency equipment on Evergreen's Boeing 747 cargo aircraft, to be added to the list of persons specified in 14 CFR 121.583(a)(8) that Evergreen is authorized to transport without complying with certain passenger-carrying airplane requirements of part 121. *GRANT, January 21, 1998, Exemption No. 6443A.*

*Docket No.:* 28115.
*Petitioner:* Aero Flight Service, Inc.
*Sections of the FAR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit the petitioner to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *GRANT, January 21, 1998, Exemption No. 6084A.*

*Docket No.:* 28103.
*Petitioner:* Silverhawk Aviation, Inc.
*Sections of the FAR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit the petitioner to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed. *GRANT, January 21, 1998, Exemption No. 6065A.*

*Docket No.:* 28496.
*Petitioner:* Bohle International Airways.
*Sections of the FAR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit the petitioner to operate its Rockwell Turbo Commander 681 airplane (Registration No. N113CT, Serial No. 6006) without a TSO–C112 (Mode S) transponder installed. *GRANT, January 21, 1998, Exemption No. 6454A.*

*Docket No.:* 28455.
*Petitioner:* Sound Flight, Inc.
*Sections of the FAR Affected:* 14 CFR 135.203(a)(1).
*Description of Relief Sought/ Disposition:* To permit the petitioner to conduct operations under visual flight rules outside controlled airspace at an altitude below 500 feet above ground level. *GRANT, January 21, 1998, Exemption No. 6428A.*

*Docket No.:* 28092.
*Petitioner:* B2W Corporation.
*Sections of the FAR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit the petitioner to operate its aircraft under the provisions of part 135 without a TSO–C112 transponder installed. *GRANT, January 21, 1998, Exemption No. 6083A.*

*Docket No.:* 28170.
*Petitioner:* Simulator Training, Inc.
*Sections of the FAR Affected:* 14 CFR 121.411(a)(2) and (3), and (b)(2); 121.413(b), (c), and (d) and appendix H.
*Description of Relief Sought/ Disposition:* To permit certain pilot and flight engineer instructors employed by the petitioner and listed in an air carrier certificate holder's approved training program to act as simulator instructors for an air carrier certificate holder under part 121 without those instructors

having received ground and flight training in accordance with a training program approved under subpart N of part 121. *GRANT, January 16, 1998, Exemption No. 6721.*

*Docket No.:* 137CE.

*Petitioner:* Air Tractor, Inc.

*Sections of the FAR Affected:* 14 CFR 23.3(a).

*Description of Relief Sought/ Disposition:* To permit the petitioner, a normal category airplane, to exceed the 12,500 pound limitation for this category of airplane. *DENIAL, December 31, 1998, Exemption No. 6715.*

*Docket No.:* 29085.

*Petitioner:* ACM Aviation, Inc.

*Sections of the FAR Affected:* 14 CFR 135.263(a) and 135.267(b), (c), and (d).

*Description of Relief Sought/ Disposition:* To permit the petitioner to assign its flight crewmembers and allow its flight crewmembers to accept a flight assignment of up to 16 hours of flight time during a 24-hour period, for the purpose of conducting international operations. *DENIAL, January 21, 1998, Exemption No. 6722.*

[FR Doc. 98–2588 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Madison, Wayne and Butler Counties, Missouri

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed improvements to the transportation system in Madison, Wayne, and Butler Counties, Missouri.

**FOR FURTHER INFORMATION CONTACT:** Donald Neumann, Programs Engineer, FHWA Division Office, PO Box 1787, Jefferson City, MO 65102, Telephone: (573) 636–7104 or Scott Meyer, District Engineer, Missouri Department of Transportation, PO Box 160, Sikeston, MO 63801, Telephone: (573) 472–5333.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS for a proposed project to improve the transportation system in the vicinity of U.S. 67 in Madison, Wayne and Butler Counties, Missouri.

Improvements to the corridor are considered necessary to provide for a safe and efficient transportation network. Alternatives under consideration include (1) Taking no action; (2) using alternate travel modes; (3) upgrading and improving the existing roadways; and (4) constructing a four-lane roadway on new or partially-new location. Design variations of grade and alignment will be incorporated into and studied with the various build alternatives. The proposed action will likely include transportation improvements from south of Fredericktown to approximately three miles north of the Missouri/Arkansas state line, in the vicinity of Neeleyville, Missouri.

The scoping process will involve all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held to engage the regional community in the decision making process and to obtain public comment. A public meeting is expected for early 1998. Subsequent public meetings will be conducted as the location study process progresses. In addition, a public hearing will be held to present the findings of the draft EIS (DEIS). The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 15, 1998.

**Donald L. Neumann,**

*Programs Engineer, Jefferson City.*

[FR Doc. 98–2128 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION [4910–22-P]

### Federal Highway Administration

### Federal Transit Administration

### National ITS Architecture Consistency Meetings

**AGENCIES:** Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice announces a series of regional meetings at which DOT will discuss national ITS architecture consistency as it relates to highway and transit improvements that incorporate Intelligent Transportation Systems (ITS). It is anticipated that the upcoming surface transportation reauthorization bill will require federally funded projects which contain ITS elements to be consistent with the National ITS Architecture and approved standards. In anticipation, DOT is initiating a series of outreach meetings to engage a broad range of stakeholders in discussions regarding consistency requirements. These meetings will be of interest to those involved in the planning, design and implementation of technology applications in transportation. The first meeting will be held in the Boston area. Regional meetings are also planned for March in Houston, TX and Los Angeles, CA; specific dates and locations will be published at a later date. Additional meetings are proposed for April and May.

**DATES:** The Boston area meeting will be held February 25–26, 1998, from 8:30 a.m. to 5:00 p.m. on February 25th and from 8:30 a.m. to 12:00 p.m. on February 26th.

**ADDRESSES:** The Boston area meeting will be held at the Volpe National Transportation Systems Center, 55 Broadway, Kendall Square, Cambridge, Massachusetts.

**SUPPLEMENTARY INFORMATION:** The National ITS Architecture is a master blueprint for building an integrated, multimodal, intelligent transportation system. It provides a common framework that define key elements required for ITS functions. As such, it is an invaluable resource for planners, builders, designers, and operators of highway and transit systems to use in extending and integrating their systems operations.

A general introduction to ITS will be provided, but presentations will assume a basic awareness of technology applications in transportation. The

meetings will include a brief introduction to the National ITS Architecture and associated standards, current thinking by DOT on possible approaches to consistency, and breakout sessions for discussion among attendees on consistency-related issues.

**FOR FURTHER INFORMATION CONTACT:** Shelley Lynch, Intelligent Transportation Systems Joint Program Office (202) 366–8028; Ronald Boenau, Federal Transit Administration, (202) 366–0195; Robert Rupert, Federal Highway Administration, (202) 366–2194. All are located at the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**Authority:** 23 U.S.C. 315; 49 CFR 1.48

Issued on: January 28, 1998

**Dennis C. Judycki,**

*Associate Administrator for Safety and System Applications, Federal Highway Administration.*

**Edward L. Thomas,**

*Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration.*

[FR Doc. 98–2604 Filed 2–2–98; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 98–3396; Notice 1]**

### Orion Bus Industries Inc.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

Orion Bus Industries Inc. of Oriskany, New York, has petitioned for a five-month exemption from Motor Vehicle Safety Standard No. 121 *Air Brake Systems.* The basis of the petition is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

This notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency about the merits of the petition.

On June 7, 1995, Western Star Truck Holdings Ltd., Canada, purchased some of the assets of Bus Industries of America. Through its wholly-owned subsidiary, Orion Bus Industries Ltd. of Ontario, a manufacturer of city transit buses, it established Orion Bus Industries Inc. as a wholly-owned subsidiary of Orion Bus Industries Ltd. Since 1995, ''Orion Bus has been striving to re-organize the operation, update and replace obsolete facilities and turn an insolvent organization into a first class bus manufacturing facility employing over 1,000 employees.'' The company manufactured 699 buses in the 12-month period preceding the filing of its application.

Paragraph S5.1.6.1(a) of Standard No. 121 requires each ''single unit vehicle,'' including transit buses, manufactured on and after March 1, 1998, to be equipped with an antilock brake system. The company will be able to comply as of that date with buses entering production. However, it is asking relief from compliance for certain buses whose assembly will not be completed until after March 1, 1998. As it explains, these buses ''are part of bus contracts which have been delayed due to the insolvency of a major part supplier.'' This has disrupted Orion's schedule for over 27 weeks ''while a new vendor could be found, new tooling produced and the new supply of parts tested and certified to meet current in-use Safety Standards.'' As the buses were not designed to be equipped with antilock braking systems, their fixed-cost contracts have no provisions for the purchaser bearing the cost of modifications, and Orion would have to absorb the costs. Orion has increased its production schedule to minimize the number of buses needing an exemption. As of December 1, 1997, however, it appears to the petitioner that 148 buses will be produced on or after March 1, 1998, and not later than August 1, 1998.

Orion had a net loss of $650,000 during its limited operations in 1995, a net income of $1,223,000 in 1996, and a net income of $4,696,000 in 1997. Further costs would be incurred were Orion required to conform. At a minimum, the cost to convert stock axles sets and brake assemblies to become anti-lock compliant is estimated to be $636,740. Were Orion to complete its orders with conforming buses, the purchasers might demand that the buses for which they had already taken delivery be retrofitted to conform. This contingent liability is estimated to be $7,000,000. Orion believes that a mixed fleet would have a detrimental effect upon its purchasers ''by forcing them to carry different replacement parts, implementing different maintenance procedures and having to train maintenance personnel and drivers on how to handle the different vehicles.'' Because drivers sometimes change buses during their shifts, in an emergency a driver may not react appropriately as the situation demands.

Orion submitted data indicating that a temporary exemption ''will have little impact on the ability of a bus to come safely to a stop within the stopping distances specified in Table II of FMVSS 121.'' These data ''indicate that the test vehicle [Orion VI Transit bus] met all stopping distance guidelines and stayed within a 12-foot lane width (without wheel lock).''

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment closing date:* March 5, 1998.

**Authority:** 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: January 28, 1998.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 98–2591 Filed 2–2–98; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the certificate of appointment and request for payment of savings bonds to the representative of the estate of an incompetent or minor.

**DATES:** Written comments should be received on or before April 7, 1998, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Certificate of Appointment and Request for Payment of Series I Savings Bonds to the Representative of the Estate of An Incompetent or Minor.

*Form Number:* PD F 5385.

*Abstract:* The information is requested to establish representative's authority to act and request payment of savings bonds.

*Current Actions:* None.

*Type of Review:* New.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 1,000.

*Estimated Time Per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 330.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 28, 1998.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 98–2565 Filed 2–2–98; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the request for reissue of savings bonds by the representative of the estate of an incompetent or minor.

**DATES:** Written comments should be received on or before April 7, 1998, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Reissue of Series I Bonds by the Representative of the Estate of an Incompetent or Minor.

*Form Number:* PD F 5386.

*Abstract:* The information is requested to establish representative's authority to act and request reissue of savings bonds.

*Current Actions:* None.

*Type of Review:* New.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 1,000.

*Estimated Time Per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 330.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 28, 1998.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 98–2566 Filed 2–2–98; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the request for reissue of United States Savings Bonds.

**DATES:** Written comments should be received on or before April 7, 1998, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Reissue of Series I United States Savings Bonds.

*Form Number:* PD F 5387.

*Abstract:* The information is requested to support a request for reissue and to indicate the new registration.

*Current Actions:* None.

*Type of Review:* New.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 3,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 1,500.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 28, 1998.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 98–2567 Filed 2–2–98; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the application for disposition of savings bonds after the death of the registered owner(s).

**DATES:** Written comments should be received on or before April 7, 1998, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application For Disposition of Series I Savings Bonds After The Death of the Registered Owner(s).

*Form Number:* PD F 5394.

*Abstract:* The information is requested to request payment or reissue of savings bonds belonging to a deceased owner.

*Current Actions:* None.

*Type of Review:* New.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 1,000.

*Estimated Time Per Respondent:* 45 minutes.

*Estimated Total Annual Burden Hours:* 750.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 28, 1998.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 98–2568 Filed 2–2–98; 8:45 am]

**BILLING CODE 4810–39–P**

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''PAUL STRAND, CIRCA 1916'' (see List [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art from March 9 to May 31, 1998, and at the San Francisco Museum of Modern Art from June 19 to September 15, 1998 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

Dated: January 29, 1998.

**Les Jin,**

*General Counsel.*

[FR Doc. 98–2650 Filed 2–2–98; 8:45 am]

**BILLING CODE 8230–01–M**

[1] A copy of this list may be obtained by contacting Ms. Jacqueline Caldwell, Assistant General Counsel, at (202) 619–6982. The address is U.S. Information Agency, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Federal Register

Tuesday
February 3, 1998

Part II

# Architectural and Transportation Barriers Compliance Board

**36 CFR Part 1193**

**Telecommunications Act Accessibility Guidelines; Final Rule**

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### 36 CFR Part 1193

**[Docket No. 97–1]**

**RIN 3014–AA19**

### Telecommunications Act Accessibility Guidelines

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Final rule.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board or Board) is issuing final guidelines for accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment covered by section 255 of the Telecommunications Act of 1996. The Act requires manufacturers of telecommunications equipment and customer premises equipment to ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. When it is not readily achievable to make the equipment accessible, the Act requires manufacturers to ensure that the equipment is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

**DATES:** *Effective date:* March 5, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dennis Cannon, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 35 (voice); (202) 272–5449 (TTY). Electronic mail address: cannon@access-board.gov.

**SUPPLEMENTARY INFORMATION:**

### Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication S–34 (Telecommunications Act Accessibility Guidelines Final Rule). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–34. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (http://www.access-board.gov/rules/telfinal.htm).

This rule is based on recommendations of the Board's Telecommunications Access Advisory Committee (TAAC or Committee). The Committee's report can be obtained by contacting the Access Board and requesting publication S–32 (Telecommunications Access Advisory Committee final report). The report is also available on the Board's Internet site (http://www.access-board.gov/pubs/taacrpt.htm).

### Background

On February 8, 1996, the President signed the Telecommunications Act of 1996. The Access Board is responsible for developing accessibility guidelines in conjunction with the Federal Communications Commission (FCC) under section 255(e) of the Act for telecommunications equipment and customer premises equipment. The guidelines are required to principally address the access needs of individuals with disabilities affecting hearing, vision, movement, manipulation, speech, and interpretation of information.

Section 255 provides that a manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. A provider of telecommunications services shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable. Whenever either of these is not readily achievable, a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable. Section 255(f) provides that the FCC shall have exclusive jurisdiction in any enforcement action under section 255. It also precludes an individual's private right of action to enforce any requirement of section 255 or any regulation issued pursuant to section 255.

On April 18, 1997, the Access Board issued a notice of proposed rulemaking (NPRM) in the **Federal Register** (62 FR 19178) for accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment covered by the Telecommunications Act of 1996. In addition to proposing specific guidelines, the NPRM asked questions about some of the proposed provisions. The proposed rule was based on recommendations of the Board's Telecommunications Access Advisory Committee.

The Committee was convened by the Access Board in June 1996 to assist the Board in fulfilling its mandate to issue guidelines under the Telecommunications Act. The Committee was composed of representatives of manufacturers of telecommunications equipment and customer premises equipment; manufacturers of specialized customer premises equipment and peripheral devices; manufacturers of software; organizations representing the access needs of individuals with disabilities; telecommunications providers and carriers; and other persons affected by the guidelines.

The Board received 159 comments in response to the NPRM. Comments were received from 109 individuals who identified themselves as being hard of hearing. Also, comments were received from 19 members of the telecommunications industry and industry associations. Some of these comments were received from manufacturers of specialized customer premises equipment and peripheral devices, service providers and telecommunications equipment and customer premises equipment. Additionally, 31 comments were received from organizations representing persons with disabilities. Comments came from state organizations representing individuals with disabilities, advocacy organizations, independent consultants and academic organizations. Some of the comments received were from members of the TAAC.

The majority of TAAC members supported the proposed rule but had recommendations for changes to specific provisions. The majority of comments received from individuals who identified themselves as being hard of hearing supported the rule and specifically supported increasing volume controls on customer premises equipment. A few comments raised by these individuals included some issues that were not covered in the proposed rule. For example, some of these comments recommended providing enhanced radio volume, providing a device that displays through text what is being said on radio stations,

providing car radios equipped with headphone jacks and providing closed captioning for television programs and motion pictures. Other comments included recommendations for more efficient and effective telecommunications relay service operations, designing accessible roadside emergency call boxes which ensure two-way communications by people with hearing or speech disabilities and designing homes with acoustically absorbent materials. These issues are not covered by section 255 of the Telecommunications Act and are outside of the Board's jurisdiction in this rulemaking.

**General Issues**

This section of the rule addresses general issues raised by comments filed in response to the NPRM. Individual provisions addressed in this rule are discussed in detail under the Section-by-Section Analysis below.

*Rulemaking Authority of the Board and Effect of the Guidelines*

Section 255(e) of the Telecommunications Act provides that the Access Board shall develop guidelines for accessibility of telecommunications equipment and customer premises equipment in conjunction with the Federal Communications Commission. The Board is also required to review and update the guidelines periodically.

*Comment.* Several comments from the telecommunications industry raised questions about the relationship between the Board's guidelines and areas within the FCC's jurisdiction. The commenters noted that the FCC has exclusive jurisdiction with respect to any complaint under section 255 and that the Senate report envisioned that the guidelines would ''serve as the starting point for regulatory action by the Commission.'' Some of the commenters suggested that, absent rulemaking by the FCC, the guidelines are not binding.

*Response.* The Telecommunications Act of 1996 is the result of a conference committee which combined elements of the House and Senate bills. Section 255 is based on section 262 of the Senate bill (S. 652) which provided first for the Board to develop accessibility guidelines for telecommunications equipment and customer premises equipment, and then for the FCC to issue regulations consistent with the guidelines developed by the Board. This framework is similar to that established by Congress for implementing the accessibility requirements under the Architectural Barriers Act (ABA) and the Americans with Disabilities Act (ADA). The Board issues accessibility guidelines based on its expertise and experience which serve as the basis for further regulatory action by other agencies (General Services Administration, Housing and Urban Development, Department of Defense, and the U.S. Postal Service for the ABA; DOJ and the Department of Transportation for the ADA). The conference committee bill dropped the provision requiring the FCC to issue rules under section 255, which has resulted in questions raised by the comments. Both the Senate bill and conference committee bill gave the FCC exclusive jurisdiction with respect to complaints under section 255.

The FCC issued a notice of inquiry (NOI) on September 19, 1996, seeking public comment regarding its responsibilities under section 255. The FCC noted that it may select from a variety of approaches for enforcing section 255, including acting on a ''complaint-by-complaint basis, without issuing any rules or other guidance, beyond the guidelines issued by the Access Board'' or ''adopt[ing] the Board's guidelines, either as adopted by the Board or with revisions, as Commission rules after the appropriate Commission proceedings.'' The FCC ultimately will decide which approach to take. However, regardless whether the FCC proceeds with case-by-case determinations or rulemaking, Congress clearly intended that the FCC's actions be consistent with the Board's guidelines.

*Declaration of Conformity*

*Comment.* A few commenters from the telecommunications industry and disability organizations urged the Board to adopt the Declaration of Conformity as recommended by the TAAC. In the NPRM, the Board stated that ''since enforcement for section 255 is under the exclusive jurisdiction of the FCC, this rule does not address the Declaration of Conformity''. The United States Telephone Association (USTA) believed that the Board should require a Declaration of Conformity and that it would be wrong to merely regard the Declaration of Conformity as a complaint resolution tool. USTA states that a ''Declaration of Conformity assures the purchaser of the telecommunications equipment and/or customer premises equipment that the manufacturer has complied with section 255. It can also serve to educate the customer about what to do to communicate with the manufacturer, how to request alternate forms of user information, etc. Without a Declaration of Conformity, a customer may not be able to determine if the product to be purchased has been reviewed for accessibility.'' The United Cerebral Palsy Associations (UCPA) recommended that the final rule include a requirement for a Declaration of Conformity and that it should be on a separate piece of paper to make it more visible.

*Response.* The Access Board recognizes that there is a need to have an effective and efficient enforcement process for section 255, including the possible need for a Declaration of Conformity, as recommended by the TAAC. However, it is the FCC, and not the Access Board, which is responsible for enforcing section 255 through a complaint process. The Access Board has not addressed issues in this final rule that are clearly within the FCC's jurisdiction. The information not related to compliance that was recommended to be included in a Declaration of Conformity, primarily the requirement to supply a point of contact, is required by section 1193.33 of this rule.

*Accessibility Engineering Specialists*

*Comment.* The NPRM referred to the establishment of an Association of Accessibility Engineering Specialists under the National Association of Radio and Telecommunications Engineers. In its comments, USTA suggested that groups such as this should more appropriately be structured under an organization such as the American National Standards Institute (ANSI).

*Response.* As stated in the NPRM, the TAAC ''report also recommends the creation of a technical subgroup of a professional society which could train and eventually certify 'accessibility specialists' or engineers. As a result of work by several Committee members, such a group has already been created. The National Association of Radio and Telecommunications Engineers (NARTE), a private professional association, recently formed the Association of Accessibility Engineering Specialists. This association is expected to sponsor conferences and workshops, disseminate information, and suggest course curricula for future training and certification.'' The Board appreciates the fact that NARTE established the Association of Accessibility Engineering Specialists and believes that this group will contribute to advances in the field of accessible telecommunications equipment and customer premises equipment and assist in maintaining a cooperative dialogue among manufacturers, product developers, engineers, academicians, individuals with disabilities, and others involved in

the telecommunications equipment design and development process. Commenters who wish to have an association created under the auspices of ANSI, or any similar organization, should approach that organization. The Board encourages any efforts to move accessibility design into the mainstream of telecommunications and will work cooperatively with any established group to further those ends.

*Market Monitoring Report*

*Comment.* The NPRM discussed that the Board intends to compile a market monitoring report on a regular basis and make it available to the public. USTA commented that the Board did not offer what type of information it will specifically monitor, how often, and to what end. UCPA supported a market monitoring report and suggested that the Board specify an annual report. UCPA recommended that the report should be structured for rapid turnaround after the close of the monitoring period and that successful access solutions be highlighted.

*Response.* The Board intends to compile a market monitoring report after the guidelines are published and make it available to the public. At this point, the Board does not have a schedule for when the first report will begin or when it will be issued, since it must be incorporated into the Board's on-going research and technical assistance program. The report will address the state of the art of customer premises equipment and telecommunications equipment and the progress of making this equipment accessible and identify successful access solutions. Since the Board is required to review and update these guidelines periodically, information from this report will assist the Board in determining what provisions of the guidelines may need to be revised or whether new provisions need to be added. In particular, some issues will be targeted for examination, such as redundancy and selectability, the effect of hearing aid interference on bystanders, and whether persons with hearing impairments continue to report having trouble using public pay telephones. These issues are discussed further in the section-by-section analysis.

In addition, the Board intends to investigate whether the report might be compiled in cooperation with another government entity or private sector organization. For example, the National Institute on Disability and Rehabilitation Research (NIDRR) funds a variety of research projects and centers, including a research center devoted to telecommunications. Also, some private sector organizations have begun highlighting accessible products in reports and trade shows. The Board intends to explore whether it would be appropriate to produce the market monitoring report in conjunction with one of those groups or companies.

**Section-by-Section Analysis**

This section of the preamble summarizes each of the provisions of the final rule and the comments received in response to the proposed rule. Where the provision in the final rule differs from that of the proposed rule, an explanation of the modification is provided. The text of the final rule follows this section. An appendix provides examples of non-mandatory strategies for addressing these guidelines.

*Subpart A—General*

*Section 1193.1 Purpose*

This section describes the purpose of the guidelines which is to provide specific direction for the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment covered by the Telecommunications Act of 1996. Section 255(b) of the Act requires that manufacturers of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. Section 255(d) of the Act requires that whenever it is not readily achievable to make a product accessible, a manufacturer shall ensure that the equipment is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable. The requirement for the Board to issue accessibility guidelines is contained in section 255(e).

No substantive comments were received and no changes have been made to this section in the final rule.

*Section 1193.2 Scoping*

The NPRM stated that section 255 is intended to apply to all equipment since the Board ''finds no evidence in the statute or its legislative history that Congress intended individuals with disabilities to have fewer choices in selecting products than the general public'' and concluded that all products are subject to the guidelines.

*Comment.* The majority of comments, including the majority of those from TAAC members, supported the position that all products are subject to the guidelines. Individuals with disabilities and advocacy groups generally said they wanted the opportunity to choose among the features of various products offered to the general public, not to be forced to settle for the features a manufacturer decided to offer on the ''accessible'' product. ''Having all the models of equipment carry accessibility features is a must for me,'' said one. ''My needs are not necessarily the same as another hearing-impaired person's. Among the products that must have accessibility features are pagers, which must have vibrating mode or else they are useless. I want to have the choice to pick the right kind of vibrating pager based on my needs.'' The Massachusetts Assistive Technology Partnership supported the Board's finding that section 255 applies on a product-by-product basis. It said ''[w]ithout a clear requirement that accessibility be provided at the individual product level, customers with disabilities risk being caught forever in the same unacceptable circumstance we have experienced to date: a telecommunications marketplace which segregates accessible products from mainstream products, with all the concomitant problems which ''special'' production entails—lesser availability, greater cost, poorer quality and lack of full compatibility. While there will surely be instances where a manufacturer will choose to offer additional accessibility features in one or two products in a product line where it was not readily achievable to offer those features in every product in a product line, the proposed rule in no way prevents a manufacturer from making such an offering. The essential consideration is that accessibility, usability and compatibility must be properly considered at the individual product level * * * .''

USTA, the principal trade association of the local exchange carrier industry, and a TAAC member, agreed that all telecommunications products and customer premises equipment should be subject to the guidelines. It stated that ''[t]he issue of accessibility must relate to the whole universe of technology. To do otherwise will create a hierarchy of opportunities for customers—a hierarchy that could seriously jeopardize telecommunications service delivery.'' Bell Atlantic and NYNEX also supported a product-by-product approach to encourage manufacturers of telecommunications equipment and customer premises equipment to make accessible the widest array of

functionally different products. Bell Atlantic and NYNEX were concerned that appropriately equipped telecommunications equipment and customer premises equipment should be available to implement or complement their services and that without needed network equipment, service providers could be unable to meet the telecommunications needs of people with disabilities in an efficient manner. Bell Atlantic and NYNEX also made the point that accessibility can often be achieved only through compatible customer premises equipment, operating with network services. They stated that ''[u]nless manufacturers are obligated to make a variety of products with different functions accessible, assuming such accessibility is readily achievable, the accessibility options available to service providers and their customers could be severely limited.'' Bell Atlantic and NYNEX added that even without a legal mandate, adding readily achievable accessibility features to products and services is simply good business.

On the other hand, manufacturers and the Telecommunications Industry Association (TIA) uniformly said the guidelines should be applied to product ''lines'' or ''families'' and the Consumer Electronics Manufacturers Association (CEMA) said compliance should take into account the ''market as a whole'' with respect to accessibility. In particular, Ericsson, questioned the NPRM interpretation by saying ''while there is no language in the statute which specifically provides guidance on whether all equipment or some equipment must be made accessible or compatible, there is similarly no language in the legislative history which supports the Board's conclusion''. Some manufacturers read the word ''equipment'' in the statute as plural, which they felt supported their claim for coverage of groups of products rather than individual products.

Several manufacturers drew analogies to portions of facilities covered by the Americans with Disabilities Act (ADA), such as stadium seats, hotel rooms, and telephones in a bank as giving weight that only some telecommunications equipment and customer premises equipment needs to be accessible. The commenters said that the ADA has recognized that proper application of the readily achievable definition, which defines the scope of the obligations under the ADA, will, in some circumstances, result in people with disabilities having accessibility but fewer choices than the general public. The commenters concluded that all products should not be required to be accessible if other models of a similar product with comparable features and at comparable cost are available.

These commenters also added that with a broad range of accessibility needs to be met, it is unrealistic to expect that a manufacturer could provide this range of products within the limits of the readily achievable limitation. These commenters further said that varying and occasionally conflicting accessibility needs of persons with different disabilities virtually dictate a product family approach. The Information Technology Industries Council commented that accessibility issues raised by section 255 require the Board to consider cost impact issues of far greater scope and complexity, involving the recurring costs of designing and manufacturing complex products sold in a highly competitive marketplace characterized by rapid technological innovation. Because competitive profit margins are thin, company survival and continuing research and innovation are extremely sensitive to cost increases. Many telecommunications industry commenters expressed concern that the guidelines will have an inhibiting effect if they discourage equipment manufacturers from developing specialized products targeted to the differing, and sometimes mutually inconsistent, needs of individuals with differing disabilities.

*Response.* Section 255 requires manufacturers to ensure that telecommunications equipment and customer premises equipment are designed, developed and fabricated to be accessible. Manufacturers seem to argue that the statute can be read as having a second qualifier, in addition to readily achievable. That is, manufacturers argue that some telecommunications equipment and some customer premises equipment should be designed developed and fabricated to be accessible if readily achievable, unless comparable equipment is available.

Manufacturers claim the statute should be read as applying to product ''lines'' or ''families'' rather than individual products as long as accessible products with comparable, substantially comparable, or similar features are available at a comparable cost. These commenters did not provide a definition of a product line or family. It is not clear whether all cellular telephones are to be regarded as part of the same product line, so that only one needs to be accessible to a person with a disability, even if it were readily achievable to make others accessible. The comment from CEMA goes further by suggesting that, if one manufacturer makes a cellular phone accessible to blind persons, another manufacturer would not need to even consider whether it were readily achievable to do so.

Aside from the fact that such an interpretation is not supported by the plain statutory language, it does not answer the question of what is comparable. Suppose a person with a disability wants the features on product A, but product B has the accessibility features. For example, product A is a pager with a lighted display which can be seen in dim light, and product B is a pager without the lighted display but with a vibrator to alert a deaf person. It is not clear what ''comparable'' feature is the substitute for not having the lighted display. If the deaf person works in a low-light environment, the lighted display may be needed. Moreover, if the deaf person also has a visual impairment, a situation common among older persons, the lighted display may be part of the accessibility that person needs. Similarly, a modem manufacturer might offer V.18 compatibility only on its 9600 bps model, not its 56k bps model. Conversely, it may provide V.18 capability only on its fast modem, but some service providers do not support high speed modems. Furthermore, commenters provided no indication of how much of a price difference is to be considered as comparable. The statute provides only one reason for not making telecommunications equipment and customer premises equipment accessible, usable, or compatible and that is that it is not readily achievable. The clear meaning of the statute is, if it is readily achievable to put a vibrator in product A and product B, and V.18 capability in more than one modem, a manufacturer is required to do so.

The Board has acknowledged that it may not be readily achievable to make every product accessible or compatible. Depending on the design, technology, or several other factors, it may be determined that providing accessibility to all products in a product line is not readily achievable. The guidelines do not require accessibility or compatibility when that determination has been made, and it is up to the manufacturer to make it. However, the assessment as to whether it is or is not readily achievable cannot be bypassed simply because another product is already accessible. For this purpose, two products are considered to be different if they have different functions or features. Products which differ only cosmetically, where such differences do not affect functionality, are not

considered separate products. An appendix note has been added to clarify this point.

In drawing analogies from the ADA, the correct connection is between telecommunications equipment and customer premises equipment and the facility, not individual elements within the facility. For example, all theaters in a multi-theater complex must be accessible so that persons with disabilities can choose which films to see, not only a few theaters with ''comparable'' movies; all stadiums must be accessible, not just one for baseball, one for football, and one for soccer. Disabled persons' seat choices are limited but not whether they can see movie A or movie B. Also, within a phone bank, the one accessible phone is simply at a lower position but it is not merely ''comparable'' to the other phones in the bank, it is identical.

Finally, many of the commenters contend that certain requirements are not readily achievable if applied across all products. Several mentioned the incompatibility or conflict between solutions for different disabilities, though no examples of such conflicts were provided. If such designs are truly not readily achievable, the guidelines do not require accessibility or compatibility. Thus, the guidelines would be satisfied.

*Comment.* CEMA wanted the Board to take into account that the cost of retooling an assembly line is prohibitively expensive if done before the production cycle lifespan of a product has come to an end. CEMA recommended that the guidelines should be modified to recognize the need for manufacturers to complete production runs prior to making design changes and asked for a ''grace period'' after having complied with current guidelines before having to retool their assembly lines and update to any new guidelines.

*Response.* No explicit ''grace period'' is needed since it is built into the determination of readily achievable.

*Comment.* The majority of comments praised the Board for adhering to the recommendations of the TAAC report. However, several comments said the NPRM had converted numerous TAAC voluntary recommendations into mandatory obligations.

*Response.* The Board's guidelines are rules under the meaning of the Administrative Procedures Act [1] and are appropriately written in mandatory language. Nevertheless, the guidelines maintain the TAAC recommendations insofar as they were written as ''shall'' or ''should.'' Some of the TAAC recommendations which used ''should'' were placed in the appendix, such as the recommendation that manufacturers encourage distributors to adopt information dissemination programs similar to theirs, or to incorporate redundancy and selectability in products. Where the Board felt the provision was important enough that it belonged in the text, it was converted to a requirement. How each requirement is implemented will be determined as each manufacturer deems appropriate for its own operation, such as the requirement to consider including persons with disabilities in product trials.

*Comment.* One commenter recommended that the guidelines be clarified to explain that they apply solely to equipment used primarily for access to telecommunications services. The commenter pointed out that the Senate report exempted equipment used to access ''information services''. The commenter indicated that the Senate's definition of telecommunications, as set forth in the report ''excludes those services, such as interactive games or shopping services or other services involving interaction with stored information, that are defined as information services.''

*Response.* Information services are not covered by these guidelines. The Act defines what is telecommunications equipment and customer premises equipment. If a product ''originates, routes or terminates telecommunications'' it is covered whether the product does that most of the time or only a small portion of the time. Of course, only the functions directly related to a product's operation as telecommunications equipment or customer premises equipment are covered by the guidelines. A set-top-box which converts a television so that it can send e-mail or engage in Internet telephony, for example, is customer premises equipment when performing those functions. The Senate report only excludes those services described as ''information services''. It does not mean any equipment which receives such services is excluded if the product is also customer premises equipment.

*Comment.* One comment objected to the Board's exclusion of existing products for coverage by the guidelines, noting that the word ''new'' does not appear in the statute. Many current products will be on the market for some time and should be required to be retrofitted to be accessible or compatible, if readily achievable.

*Response.* While it is true that the word ''new'' does not occur in the statute, the Senate report clearly says that the Board's guidelines should be ''prospective in nature'', intended to apply to future products. In addition, the statute applies to equipment designed, developed and fabricated which the Board interprets to mean that the Act applies to equipment for which all three events occurred after enactment of the Act. There is no requirement to retrofit existing equipment.

*Section 1193.3 Definitions*

With a few exceptions discussed below, the definitions in this section are the same as the definitions used in the Telecommunications Act of 1996.

*Accessible.* Subpart C contains the minimum requirements for accessibility. Therefore, the term accessible is defined as meeting the provisions of Subpart C.

*Comment.* A few commenters suggested making the definition more general by using a definition which did not refer to Subpart C.

*Response.* Using a more general definition would make the term ''accessible'' subjective and potentially allow the term to be used to describe products which do not comply with these guidelines. Therefore, the definition has not been changed.

*Alternate Formats.* Certain product information must be made available in alternate formats for the product to be usable by individuals with disabilities. Common forms of alternate formats are Braille, large print, ASCII text, and audio cassettes. Further discussion of alternate formats is provided in section 1193.33 and in the appendix.

No substantive comments were received and no changes have been made to this definition.

*Alternate Modes.* Alternate modes are different means of providing information to users of products including product documentation and information about the status or operation of controls. For example, if a manufacturer provides product instructions on a video cassette, captioning or video description would be required. Further discussion of alternate modes is provided in section 1193.33 and in the appendix.

*Comment.* Some commenters noted that the proposed definition did not actually define alternate modes, but simply gave a listing of examples. Also, several commenters, including the American Council of the Blind and the American Foundation for the Blind recommended that the term ''audio description'' be changed to ''video description'' because the term ''video'' more accurately describes the means of providing the information.

[1] See 5 U.S.C. 551 (4).

*Response.* A definition is provided for the term ''alternate modes'' in the final rule. In addition, the term ''audio description'' has been changed to ''video description.''

*Compatible.* Subpart D contains the minimum requirements for compatibility with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access. Therefore, the term compatible is defined as meeting the provisions of Subpart D.

*Comment.* One commenter noted that the term ''compatible'' is too nebulous and broad and recommended substituting the word interoperable for compatible.

*Response.* The term ''compatible'' is taken directly from the statute. Therefore, the term has been retained in the final rule.

*Customer Premises Equipment.* This definition is taken from the Telecommunications Act. Equipment employed on the premises of a person, which can originate, route or terminate telecommunications, is customer premises equipment. ''Person'' is a common legal term meaning an individual, firm, partnership, corporation, or organization.

Customer premises equipment can also include certain specialized customer premises equipment which are directly connected to the telecommunications network and which can originate, route, or terminate telecommunications. Equipment with such capabilities is covered by section 255 and is required to meet the accessibility requirements of Subpart C, if readily achievable, or to be compatible with specialized customer premises equipment and peripheral devices according to Subpart D, if readily achievable.

*Comment.* The proposed rule asked for comments on the definition of customer premises equipment. Some commenters stated that it was unclear whether software was included in the definition. Also, it was suggested by one commenter that the definition include ''wireless systems''. Some comments from industry, including Matsushita Electric Corporation of America suggested that the definition of customer premises equipment be changed ''to confine the applicability of the guidelines . . . to equipment the primary use of which is telecommunications, thus exclud[ing] such products as television receivers, VCRs, set-top boxes, computers without modems, and other consumer products the primary purpose of which is other than for telecommunications.'' Self Help for Hard of Hearing People (SHHH) and many individuals who are hard of hearing suggested clarifying the definition to include public pay telephones as examples of customer premises equipment.

*Response.* If a product ''originates, routes or terminates telecommunications'' it is customer premises equipment and thus covered by the Act whether the product does that most of the time or only a small portion of the time. Only the functions directly related to the product's operation as customer premises equipment are covered. For example, the buttons, prompts, displays, or output and input needed to send and receive e-mail or an Internet telephone call are covered. Other functions not related to telecommunications, such as starting a program on a computer or changing channels on a combination television-Internet device would not be covered. The term ''customer premises equipment'' is defined in the Telecommunications Act and the definition in the NPRM was taken directly from the Act. The definition has been retained in the final rule without change.

The guidelines do not differentiate between hardware, firmware or software implementations of a product's functions or features, nor do they differentiate between functions and features built into the product and those that may be provided from a remote server over the network. The functions are covered by these guidelines whether the functions are provided by software, hardware, or firmware. As the NPRM indicated, customer premises equipment may also include wireless sets.[2] Finally, public pay telephones are considered customer premises equipment.[3]

*Manufacturer.* This definition is provided as a shorthand reference for a manufacturer of telecommunications equipment and customer premises equipment.

*Comment.* Several commenters recommended that the definition be modified to include subcomponent manufacturers, manufacturers of component parts which can convert a piece of equipment into customer premises equipment, and software manufacturers that design software to be used in telecommunications or customer premises equipment. The National Association of the Deaf recommended that the definition of manufacturer be flexible so that it does not unduly restrict the type of entity that is covered by section 255. Another commenter recommended that the term manufacturer be defined to include those who assemble the component parts into a final product.

*Response.* For the purposes of these guidelines, a manufacturer is the entity which makes a product for sale to a user or to a vendor who sells to a user. This would generally be the final assembler of separate subcomponents; that is, the entity whose brand name appears on the product. Acme Computers, for example, would be responsible for ensuring accessibility to any of its computers which can originate, route or terminate telecommunications. Such a computer might include a General Products modem which is itself a manufacturer because it sells General Products modems directly to the public. Acme Computers would be responsible for ensuring that it obtained the accessible General Products modem for inclusion in its computers. Also, Acme would ensure, through contractual provisions, purchase order stipulations, or any other method it chooses, that subcomponent suppliers who were not themselves manufacturers, provided accessible subcomponents where available. Thus, Acme can share or distribute responsibility for design, development and fabrication of accessible products. The definition has been clarified in the final rule.

*Peripheral Devices.* Section 255 (d) of the Act provides that when it is not readily achievable to make telecommunications equipment or customer premises equipment accessible, manufacturers shall ensure that the equipment is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable. No definition is provided in the Act but the term peripheral devices commonly refers to audio amplifiers, ring signal lights, some TTYs, refreshable Braille translators, text-to-speech synthesizers and similar devices. These devices must be connected to a telephone or other customer premises equipment to enable an individual with a disability to originate, route, or terminate telecommunications. Peripheral devices cannot perform these functions on their own.

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[2] See Declaratory Ruling, DA 93–122 , 8 FCC Rcd 6171, 6174 (Com. Car. Bur. 1993) *(TOCSIA Declaratory Ruling), recon. pending* (finding that definition of ''premises'' includes ''locations'' such as airplanes, trains and rental cars, despite the fact that they are mobile).

[3] See, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 96–128, November 8, 1996.

No substantive comments were received and no changes have been made to this definition.

*Product.* This definition is provided as a shorthand reference for telecommunications equipment and customer premises equipment.

No substantive comments were received and no changes have been made to this definition.

*Readily Achievable. Comment.* Many comments from persons with disabilities and their organizations wanted the Board to apply stricter criteria, such as ''undue burden,'' rather than readily achievable. The National Association of the Deaf (NAD) said it is critical that the readily achievable analysis under section 255 be performed on a case-by-case basis, rather than through a numerical or other standard formula for all telecommunications equipment. NAD also supported the NPRM proposal to consider design expertise, knowledge of specific manufacturing techniques, or the availability of certain kinds of technological solutions among a company's available resources. Further, a readily achievable determination made under section 255 should parallel a readily achievable analysis under the Americans with Disabilities Act (ADA) in that it should consider the entire operations and resources of a parent corporation and its subsidiaries in determining the manufacturer's resources.

Manufacturers, on the other hand, did not feel the resources of a parent company should be taken into account. They pointed out the unique financial configurations of telecommunications companies as being divided into separate design units, each with its own budgetary resources and fiscal responsibilities.

*Response.* The use of the term readily achievable rather than undue burden is a statutory requirement. The Board cannot change the term. What the guidelines can do is provide some guidance to manufacturers as to how to relate the readily achievable factors from the ADA to the telecommunications industry.

Both the statutory definition of readily achievable and the Department of Justice (DOJ) regulations include the resources of a parent company as a factor. However, such resources are considered only to the extent those resources are available to the subsidiary. If, for example, the subsidiary is responsible for product design but the parent company is responsible for overall marketing, it may be appropriate to expect the parent company to address some of the marketing goals. If, on the other hand, the resources of a parent company are not available to the subsidiary, they may not be relevant. This determination would be made on a case-by-case basis.

*Comment.* Manufacturers were split on the issue of factors to be considered, some saying the ADA factors should be applied without amplification and others saying the unique character of telecommunications required a tailored set of criteria. Ericsson supported the NPRM adoption of the formal definition of readily achievable as ''easily accomplishable and able to be carried out without much difficulty or expense.'' However, Ericsson recommended that any additional language which explains the factors to be considered in determining whether it is readily achievable for a manufacturer to make its equipment accessible or compatible, should be deleted. Ericsson commented that the FCC, pursuant to its complaint jurisdiction, is in a better position than the Access Board to determine what factors in the telecommunications context are relevant to the term readily achievable.

*Response.* The final rule includes an appendix note that discusses factors to be considered in making a determination whether an action is readily achievable or not. The factors are provided for guidance only and are neither presented in any particular order or given any particular weight. The Board expects that the FCC will set forth the factors which it will use to judge compliance. Once that occurs the Board will revise the appendix to these guidelines, as appropriate. However, in the absence of specific criteria issued by the FCC, the Board believes it is desirable to provide interim guidance.

*Comment.* Several manufacturers suggested adding readily achievable factors such as weighing the removal of one barrier against another, whether the solution would limit mass market appeal, ''user-friendliness,'' and that one barrier should not be viewed in isolation to the availability of a comparable product that was accessible.

Several also said the removal of a barrier should not result in a fundamental alteration of the product. Motorola cited the DOJ ADA regulation as support that ''accessibility or compatibility features that would fundamentally alter the nature of the telecommunications equipment at issue do not fall within the definition of readily achievable and therefore are not required.'' Motorola said that DOJ reached the conclusion that ''fundamental alteration'' is a component of ''readily achievable'' by drawing a comparison to the ''undue burden'' standard, which defines the scope of a public accommodation's duty to provide auxiliary aids and services. The undue burden and readily achievable determinations depend upon the same factors. The undue burden standard, however, requires a higher level of effort to achieve compliance than the readily achievable limitation does. Since the undue burden standard excuses actions that would fundamentally modify goods and services, Motorola concludes that the readily achievable limitation would excuse such actions as well, even though this is not specifically stated in the regulations. Compactness and portability, Motorola continues, are fundamental characteristics of wireless customer premises equipment and that these attributes are responsible for their popularity. Incorporating accessibility features could, in some cases, result in a significant increase in the size of the customer premises equipment, thus fundamentally altering the nature of the product at issue.

*Response.* The appendix includes factors derived from the ADA and the DOJ regulations. Several commenters suggested adding additional factors. The Board was not persuaded that the additional factors suggested, such as mass market appeal or ''user-friendliness,'' were consistent with those from the ADA or the DOJ regulations. However, the Board does acknowledge that readily achievable is intended to be a lower standard than ''undue burden'' and that the latter includes the concept of fundamental alteration. Therefore, consistent with the DOJ interpretation, fundamental alteration is listed as a factor in the appendix.

*Comment.* Some commenters said that since what is readily achievable will change over time, disability access requirements should be gradually phased-in.

*Response.* Since the determination whether an action is readily achievable will automatically change over time, with new technology or new understanding, no explicit phase-in is needed. Obviously, knowing about an accessibility solution, even in detail, does not mean it is readily achievable for a specific manufacturer to implement it immediately. Even if it only requires substituting a different, compatible part, the new part must be ordered and integrated into the manufacturing process. A more extreme implementation might require re-tooling or redesign. On the other hand, a given solution might be so similar to the current design, development and fabrication process that it is readily

achievable to implement it quickly. To incorporate a specific phase-in period would delay implementation of such a readily achievable solution. Each manufacturer would make its own determination as to what is now readily achievable and proceed according to its own schedule.

*Comment.* The NPRM asked (Question 2 (e)) whether resources other than monetary should be considered in determining whether an action is readily achievable. Motorola said that ''the relative technological expertise of telecommunications manufacturers should not be a factor defining what is readily achievable.'' Motorola was concerned that measuring technological expertise would be too subjective and that criteria for measuring expertise may not be fairly and consistently applied. On the other hand, TIA said that resources other than monetary should be considered in determining whether an action is readily achievable. TIA suggested that the process of technological innovation is only feasible when the appropriate resources in the appropriate quantities are applied at the appropriate time.

*Response.* Some commenters seemed to think that the inclusion of technical expertise was to be used in place of financial resources or as a reason for requiring one company to do more than another. This was not the intent but, rather the reverse. That is, a company might have ample financial resources and, at first glance, appear to have no defense for not having included a particular accessibility feature in a given product. However, it might be that the company lacks personnel with experience in software development, for example, needed to implement the design solution. One might reason that, if the financial resources are available, the company should hire the appropriate personnel, but, if it does, it may no longer have the financial resources to implement the design solution. One would expect that the company would develop the technical expertise over time and that eventually the access solution might become readily achievable. The Board has never proposed to make any determinations of whether any activity was readily achievable, only to set forth a series of factors that a manufacturer would consider in making its own determination.

*Comment.* Motorola felt that it would be inappropriate for a government entity to ''certify'' the competence of any manufacturer or its personnel.

*Response.* There was never any suggestion that any government entity would ''certify'' any personnel or that any determination would be made by anyone but the manufacturer itself. The question was designed to raise the issue that whether something was readily achievable could be related to more than monetary resources.

*Comment.* Some commenters said that proprietary accessibility features will frequently have additional costs associated with licensing fees. If rights to use those technologies can be obtained, which is not at all certain, the right to use proprietary technology to provide accessibility will be expensive. In some cases, such proprietary access technologies would not be available for a reasonable price and therefore could not be required.

*Response.* This cost would be included as part of an assessment of what is readily achievable.

*Comment.* One commenter stated that a manufacturer could hesitate before introducing a potentially valuable technical innovation if doing so would cause section 255 compliance costs to immediately skyrocket.

*Response.* Compliance costs would not ''skyrocket'' since cost is explicit in determining what is readily achievable. If the cost goes over what the manufacturer considers to be readily achievable, the compliance cost drops to zero because the new product is no longer required to be accessible or compatible.

*Comment.* The NPRM asked (Question 2 (b)) whether large and small manufacturers would be treated differently under the readily achievable limitation and whether this would confer a market advantage on small companies (Question 2 (c)) because they would have fewer resources and, therefore, be expected to do less. Comments uniformly supported the idea that the readily achievable criteria should be applied equally. Several comments pointed out that any advantage a small manufacturer derived would be temporary. A company with few resources, they argued, might be able to claim that providing accessibility was not readily achievable and could manufacture cheaper products. However, any competitive advantage it gained would result in higher sales, increasing its resources, until it could no longer claim access was not readily achievable.

*Response.* The NPRM question was confusing and apparently gave the impression that the Board was considering developing different criteria for large and small companies. The Board did not intend to suggest that different criteria would be applied to different sized manufacturers.

*Comment.* The NPRM asked (Question 2 (d)) whether ''technological feasibility'' should be an explicit factor in determining whether an action is readily achievable. Most comments agreed this is an important factor and said it needed to be included. However, some comments pointed out that if an action were not technologically feasible, it would not be accomplishable at all, let alone ''easily accomplishable, without much difficulty or expense.'' NAD said that, where a manufacturer alleges that providing accessibility for a particular telecommunications product will not be technologically feasible, the manufacturer should be required to demonstrate that it has engaged in comprehensive efforts to overcome the technological problems at hand.

*Response.* The Board agrees that technological feasibility is inherent in the determination of what is readily achievable and does not need to be explicitly stated. The issue of what a manufacturer must demonstrate is a matter for the FCC to decide in an enforcement proceeding.

*Specialized Customer Premises Equipment.* Section 255(d) of the Telecommunications Act requires that whenever it is not readily achievable to make a product accessible, a manufacturer shall ensure that the equipment is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable. The Telecommunications Act does not define specialized customer premises equipment. As discussed above, the Act defines customer premises equipment as ''equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications'.

The Board noted in the NPRM that the Act and its legislative history do not make clear whether Congress intended to treat specialized customer premises equipment differently from peripheral devices. The NPRM also pointed out that certain specialized equipment, such as direct-connect TTYs, can originate, route, or terminate telecommunications without connection to other equipment. The NPRM concluded that if specialized customer premises equipment can originate, route, or terminate telecommunications, it appears that the equipment should be treated the same as customer premises equipment and asked (Question 3) if this should be the case.

*Comment.* The overwhelming majority of comments including those from the telecommunications industry

and disability organizations responded that if specialized customer premises equipment can originate, route, or terminate telecommunications, the equipment should be treated the same as customer premises equipment. The Trace Center commented that TTYs are made primarily for individuals who are deaf and requiring that TTYs provide voice output for all of the information displayed on the screen seems counter productive. One commenter suggested that the term ''limited customer premises equipment'' replace the term specialized customer premises equipment because it would more accurately describe a device that serves a certain population. Ultratec, a manufacturer of TTYs, commented that the majority of the output criteria, and all of the compatibility criteria, are not applicable to TTYs. Therefore, TTYs should not be considered customer premises equipment.

*Response.* The statute, not the guidelines, defines customer premises equipment. If specialized customer premises equipment can originate, route, or terminate telecommunications, it is customer premises equipment according to the statutory definition. Therefore, the term ''specialized customer premises equipment'' is defined in the final rule as ''equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications, which is commonly used by individuals with disabilities to achieve access.'' If specialized customer premises equipment manufacturers are not required to follow the guidelines where readily achievable, then individuals with multiple disabilities, or individuals with disabilities other than deafness who want to communicate with individuals who are deaf may find it difficult or impossible to find specialized customer premises equipment that they can use. For example, even though it may seem ''counter-productive,'' a person who is blind may need to communicate with a TTY user directly, without going through a relay service, and would need auditory output. Whether it is readily achievable to provide auditory output is for the manufacturer to decide. The fact that individuals with multiple disabilities are not the primary market for the specialized customer premises equipment is not persuasive, since this is equally true of all mass market manufacturers.

The provisions for accessibility and compatibility are required only when the feature or function is provided. For example, the requirement to provide a visual output applies only where an auditory output is provided. Thus, if a product provides no auditory output for its operation, a corresponding visual output is not required. Therefore, a TTY should be able to meet the provisions for output and compatibility the same as any other telecommunications equipment or customer premises equipment. A particular manufacturer must make the determination of what is readily achievable on a case-by-case basis.

On balance, the Board concludes that specialized customer premises equipment should be considered a subset of customer premises equipment, and that manufacturers of specialized customer premises equipment should make their products accessible to all individuals with disabilities, including the disability represented by their target market, where readily achievable.

*Comment.* Ultratec pointed out that, currently, TTYs with direct connect capabilities are analog only units and that consumers cannot use the full capabilities of direct connect TTYs (i.e. auto answer capabilities), unless they install a separate analog port within their digital PBX system. This, Ultratec adds, is a compatibility issue and as a specialized customer premises equipment manufacturer cannot do anything to bring about access at this time in a digital environment.

*Response.* The Board understands that some manufacturers are working to solve the non-compatibility between analog and digital signals, but that a solution may not be readily achievable at this time. A note has been added to the appendix regarding strategies that can be used to improve the compatibility between TTYs and the telecommunications network in the interim until industry standards are in place.

*Telecommunications.* This is the same definition from the Telecommunications Act.

No substantive comments were received regarding this definition and no changes have been made in the final rule.

*Telecommunications Equipment.* This is the same definition from the Telecommunications Act.

No substantive comments were received regarding this definition and no changes have been made in the final rule.

*Telecommunications Service.* This is the same definition from the Telecommunications Act.

No substantive comments were received regarding this definition and no changes have been made in the final rule.

*TTY.* This definition is taken from the ADA Accessibility Guidelines, primarily for consistency with the Board's other guidelines.

No substantive comments were received regarding this definition and no changes have been made in the final rule.

*Usable.* This definition is included to convey the important point that products which have been designed to be accessible are usable only if an individual has adequate information on how to operate the product. Further discussion of usability is provided in § 1193.33.

*Comment.* Ericsson points out that neither the Act, nor its legislative history defines ''usable'' as meaning access to instructions, product information and documentation relative to products. Ericsson suggests that the term ''usable'' be stricken from the definitions section. The Trace Center recommended some minor editorial changes to the definition as proposed.

*Response.* The term ''usable'' in the Act does not stand alone, but, rather is part of a term of art, ''accessible to and usable by'' persons with disabilities, which is a standard phrase in disability law and regulation. The term generally means more than ''convenient and practicable for use'' as Ericsson suggested in its comments. Typically, ''accessible'' means an element complies with a specific technical specification whereas ''usable'' means a person with a disability can use the element effectively. Something can be accessible but not usable: a door can be built to correct specifications, with proper maneuvering space, but space can be blocked by furniture or otherwise be made unusable. Conversely, something can be usable but not accessible: a door which does not meet maneuvering space requirements (i.e., is not accessible) can be made usable by adding a power operator.

Telecommunications equipment or customer premises equipment is made usable to a purchaser by having instructions; except for the simplest device, it would not be usable by anyone without instructions. If instructions are not provided for any user, instructions in alternate formats would not be required. Accessible features can be provided, but without instructions, the product could not be used.

Where information or documentation is provided for a product, the information or documentation must be provided in an accessible format that is usable by a person with a disability. Clearly, to be usable by persons with disabilities instructions must be in a

form they can use: print information is not very helpful to a person who is blind and auditory information is useless to a person who is deaf. A slight editorial change has been made in response to the comment from the Trace Center.

*Subpart B—General Requirements*

*Section 1193.21 Accessibility, Usability and Compatibility*

This section provides that where readily achievable, telecommunications equipment and customer premises equipment shall comply with the specific technical provisions of Subpart C. Where it is not readily achievable to comply with Subpart C, telecommunications equipment and customer premises equipment shall comply with the provisions of Subpart D, if readily achievable. This is a restatement of the Act and sets forth the readily achievable limitation which applies to all subsequent sections of these guidelines.

*Comment.* Several comments pointed out that the NPRM applied the readily achievable limitation only to the provisions of Subparts C and D but not to the other provisions in the rule. They correctly noted that the statutory requirements for usability are also subject to the readily achievable limitation. As proposed, the obligations to provide usable documentation seemed to be absolute. Additionally, the Trace Center pointed out that the NPRM was unclear whether the requirements of Subpart D (Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment) must be met if a product fully complies with the requirements in Subpart C (Requirements for Accessibility and Usability).

*Response.* The Board agrees that the statute applies the readily achievable limitation to usability as well as accessibility and compatibility. Therefore, the title of this section has been changed and the proposed §§ 1193.25, 1193.27 and 1193.29 have been moved to Subpart C and renumbered accordingly. Section 255 does not require telecommunications equipment and customer premises equipment to be both accessible and compatible. Therefore, telecommunications equipment and customer premises equipment are not required to be compatible with peripheral devices or specialized customer premises equipment if they comply with the requirements in subpart C.

*Section 1193.23 Product Design, Development and Evaluation*

This section requires manufacturers to evaluate the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment and incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers must develop a process to ensure that products are designed, developed and fabricated to be accessible whenever it is readily achievable. Since what is readily achievable will vary according to the stage of development (i.e., some things will be readily achievable in the design phase which are not in later phases), barriers to accessibility, usability, and compatibility must be identified throughout product design and development, from conceptualization to production. Moreover, usability can be seriously affected even after production, if information is not provided in an effective manner.

The details of such a process will vary from one company to the next, so this section does not specify the structure or specific content of a process. Instead, this section sets forth a series of factors that a manufacturer must consider in developing such a process. How, and to what extent, each of the factors is incorporated in a specific process is up to the manufacturer.

*Comment.* The majority of comments supported the provision as proposed but manufacturers generally objected to intrusions into their proprietary or discretionary activities. They also viewed this provision as creating paperwork burdens and criticized the Board for not using the TAAC recommendation which used the word ''should'' rather than mandatory language for this section.

*Response.* The provision, as proposed, consisted of a set of factors which the Board considers critical to the development of any plan which seeks to ensure that products will be designed, developed and fabricated to be accessible. As such, they are more than suggestions. On the other hand, the Board is fully aware that different manufacturers, or even the same manufacturer at different times, must be given the flexibility to tailor any such plan to its own particular needs. Therefore, while this section sets forth the factors which must be considered in approaching how accessibility will be provided, it does not prescribe any particular plan or content. It does not require that such a process be submitted to any entity or that it even be in writing. The requirement is outcome-oriented, and a process could range from purely conceptual to formally documented, as suits the manufacturer. With respect to the ''mandatory'' nature of the provision, as explained elsewhere, the Board does not construe its statutory mandate as merely providing hortatory technical assistance. However, the Board did not ignore the TAAC recommendation, it merely approached it from a different direction.

*Comment.* Commenters almost uniformly misconstrued the provision as requiring extensive activities and documentation, which it does not. One manufacturer interpreted the section as requiring a ''checklist'' which would need to be completed for each product.

*Response.* While there is nothing to prevent a manufacturer from using extensive activities and documentation, this approach is neither required nor suggested. A ''checklist'' seems to envision an after-the-fact evaluation activity which is certainly not the best way to achieve access. It also seems to assume that such evaluation is to be applied to existing products. As explained in section 1193.2, these guidelines apply to products designed, developed and fabricated after the effective date of this rule. Of course, in the beginning, before designers and developers are knowledgeable and familiar with access, some checklist procedure may be useful. Ultimately, however, the goal is for designers to be aware of access and incorporate such considerations in the conceptualization of new products. When an idea is just beginning to take shape, a designer would ask, ''How would a blind person use this product? How would a deaf person use it?'' The sooner a manufacturer makes its design team cognizant of design issues for achieving accessibility and proven solutions for accessibility and compatibility, the easier this process will be. But, again, how this is done is up to the manufacturer.

*Comment.* Manufacturers also believed the provision required extensive marketing and testing programs, well beyond what they might currently provide.

*Response.* The guidelines do not require market research, testing or consultation, only that they be considered and incorporated to the extent deemed appropriate for a given manufacturer. If a manufacturer has a large marketing effort, involving surveys and focus groups, it may be appropriate to include persons with disabilities in such groups. On the other hand, some small companies do not do any real marketing, per se, but may just notice

that a product made by XYZ Corporation is selling well and, based on this ''marketing survey'' it decides it can make a cheaper one. Clearly, ''involvement'' of persons with disabilities is not appropriate in this case. The final provision, therefore, has been revised to make it clear that these activities are not expected to be created where none existed before.

*Comment.* TIA noted that the NPRM discussion assumes the impact will be low because manufacturers are only required to achieve what can be accomplished easily, without much difficulty or expense. ''This appears,'' says TIA, ''to omit consideration of the costs of making readily achievable determinations in the first place, prior to any expenditures on design, development and fabrication.''

*Response.* As stated above, in the beginning manufacturers may spend some time evaluating products and the difficulty and expense of doing so may contribute to a finding that accessibility is not readily achievable. These costs have not been omitted, they are explicitly included in deciding whether an action is readily achievable, a determination which is to be made by the manufacturer not the Board. Moreover, as designers become more familiar with access and as technological solutions are found, the process should become more and more automatic. The Board has a positive regard for manufacturers of telecommunications equipment and customer premises equipment as enterprising innovators who desire to provide access because they view it as the right thing to do, and because it is good business, not just because there is a Federal requirement. Indeed, recent announcements by telecommunications companies suggests this is true.[4]

*Comment.* SBC Communications commented that the complex interrelationship between equipment and services in providing accessibility to telecommunications suggests that coordination and cooperation between manufacturers and service providers will be beneficial. SBC agreed that involving individuals with disabilities in the product development process will encourage appropriate design solutions to accessibility barriers and permit the exchange of relevant information. It believed that the same benefits would flow from interchanges with service providers.

*Response.* The Board agrees that it would be desirable for manufacturers to consult with service providers during the design phase. As SBC points out, the solution to a particular barrier might be better addressed by the service or might involve a combination of service and equipment designs. Accordingly, the recommendation has been added to the appendix to include service providers in any consultation process.

*Comment.* The American Council of the Blind (ACB) strongly supported the provision that manufacturers include individuals with disabilities in market research, product design, and testing. ACB felt that including individuals with disabilities is important but that manufacturers should consult with representatives from a cross-section of disability groups, particularly individuals whose disabilities affect hearing, vision, movement, manipulation, speech, and interpretation of information. ACB believed that it was important to remind manufacturers that they should work with a broad cross-section of disability groups and not just some.

*Response.* The Board agrees that a cross-section of disability groups should be included in an evaluation of the accessibility and usability of telecommunications equipment and customer premises equipment. However, since the provision is meant to be general, no change has been made in the final rule.

*Subpart C—Requirements for Accessibility and Usability*

*Section 1193.31 Accessibility and Usability*

This section provides that, subject to section 1193.21, manufacturers must design, develop and fabricate their products to meet the specific requirements of sections 1193.33 through 1193.43. As discussed under section 1193.21, some sections related to usability have been moved to this subpart to reflect that they are subject to the readily achievable limitation. The title has been changed and the sections renumbered accordingly.

*Comment.* Several manufacturers suggested replacing ''shall'' with ''should'' throughout and placing all the requirements in an appendix, not in the guidelines.

*Response.* As discussed previously, the guidelines are not merely advisory technical assistance.

*Section 1193.33 Information, Documentation and Training [1193.25 in the NPRM]*

Paragraph (a) of this section requires that manufacturers provide access to information and documentation. This information and documentation includes user guides, installation guides, and product support communications, regarding both the product in general and the accessibility features of the product. Information and documentation are what make a product usable by anyone and, if such information is provided to the public at no charge, it must be provided to people with disabilities at no additional charge. Alternate formats or alternate modes of this information are also required to be available, upon request. Manufacturers are also required to ensure usable customer support and technical support in the call centers and service centers, which support their products.

*Comment.* The American Council of the Blind (ACB) commented that the provision as proposed was unclear if alternate formats must be available at no additional charge. They also added that the alternate format provided should be of the customer's choosing, that alternate formats are not interchangeable, and that a manufacturer cannot determine which format is appropriate for any particular customer.

*Response.* The Board agrees that the provision may have been unclear in the NPRM. The final rule has been revised to clarify that additional charges may not be required for the description of accessibility and compatibility features of the product, end-user product documentation, and usable customer support and technical support. There is nothing prohibiting a manufacturer from charging everyone for these services. However, people with disabilities may not be charged an additional fee above the fee charged to everyone.

The specific alternate format or mode to be provided is that which is usable by the customer. Obviously, it does no good to provide documentation in Braille to someone who does not read it. While the user's preference is first priority, manufacturers are not expected to stock copies of all materials in all possible alternate formats and may negotiate with users to supply information in other formats. For example, Braille is extremely bulky and can only be read by a minority of individuals who are blind. Audio cassettes are usable by more people but are difficult for users to find a specific section or to skip from one section to the next. Documentation provided on disk in ASCII format can often be accessed by computers with appropriate software, but is worthless if the information sought is how to set up the computer in the first place. Of course, if instructions are provided by videotape, appropriate video

[4] ''Bell Atlantic, NYNEX Announce Plans To Make Services, Products More Accessible,'' press release, February 3, 1997.

description would be needed for persons who are blind and captions would be needed for persons who are deaf or hard of hearing.

*Comment.* Some commenters said customer support lines should be made accessible to people with hearing loss. Specifically, they pointed out that automated voice response systems go too fast, are not clear and do not allow for repeats making them inaccessible for most people with hearing loss. They recommended that menus should be set up to allow someone to escape early on by dialing a standard number such as ''0'' to talk to a person.

*Response.* Providing a quick means to ''opt out'' of a voice mail menu system is a useful feature to make such systems more usable by people who are hard of hearing. In addition, ensuring usable customer support may mean providing a TTY number, since the current automated voice response systems cannot be used by individuals who are deaf either. Such systems cannot be accessed by TTY relay services since there is generally insufficient time for the operator to type the choices and the deaf caller must wait until the end before responding. Also, if such menu systems require quick responses, they may not be usable by persons with other disabilities. An appendix note has been added recommending that automated voice response systems should be set up to allow someone to escape early on. The appendix also provides guidance on how to provide information in alternate formats and modes.

Paragraph (b) requires manufacturers to include in general product information the name and contact means for obtaining the information required by paragraph (a).

*Comment.* The NPRM specified a telephone number but some commenters pointed out that e-mail and Internet methods might be equally valid methods of contacting a manufacturer for information.

*Response.* More and more companies have access to e-mail but all companies do not. The final rule has generalized this requirement to allow for different ways other than just a telephone number to contact a manufacturer. However, a phone number is the preferred method of contact since many more people have telephones than have access to e-mail or the Internet. Additional ways of contacting a manufacturer are encouraged but are not required. The name of the contact point can be an office of the manufacturer rather than an individual.

Paragraph (c) requires manufacturers to provide employee training appropriate to an employee's function. In developing, or incorporating information into existing training programs, consideration must be given to the following factors: accessibility requirements of individuals with disabilities; means of communicating with individuals with disabilities; commonly used adaptive technology used with the manufacturer's products; designing for accessibility; and solutions for accessibility and compatibility.

*Comment.* Several manufacturers claimed the guidelines contemplate costly training of manufacturers' employees. Several comments pointed out that the NPRM applied the readily achievable limitation only to the provisions of subparts C and D but not to the other requirements of this rule.

*Response.* The key to usability is information and the manufacturer's employees must know how to provide it in an effective manner. This is especially true for good technical support, if persons with disabilities are to receive adequate information on how to use the new accessibility features of telecommunications equipment and customer premises equipment. The guidelines, however, do not require a specific training program, only that certain factors be considered and incorporated to the extent deemed appropriate by a given manufacturer.

Obviously, not every employee needs training in all factors. Designers and developers need to know about barriers and solutions. Technical support and sales personnel need to know how to communicate with individuals with disabilities and what common peripheral devices may be compatible with the manufacturer's products. Other employees may need a combination of this training. No specific program is required and the manufacturer is free to address the needs in whatever way it sees fit, as long as effective information is provided.

The Board agrees that the statute applies the readily achievable limitation to usability as well as accessibility and compatibility. As noted in the discussion in section 1193.21 above, the title of this section has been changed and the proposed section has been moved to Subpart C and renumbered accordingly.

*Section 1193.35 Redundancy and Selectability [1193.33 in the NPRM]*

This section proposed that products incorporate multiple modes for input and output functions and that the user be able to select the desired mode.

*Comment.* Manufacturers objected to this provision on the basis that it added unnecessary and potentially unwanted functions to a product which could affect its marketability and even result in a ''fundamental alteration'' of the product. It would also, in their view, cause the product to be too complicated.

*Response.* Although this provision was supported by persons with disabilities, it may run contrary to section 1193.41 (i), which intends to make products accessible to persons with limited cognitive skills. As a result, the provision is being reserved at this time, with a recommendation for redundancy and selectability placed in the appendix. The Board intends to consider this provision further and highlight it for evaluation in its market monitoring report. If the Board's market monitoring report shows that redundancy and selectability can be provided without unnecessary complexity, it will re-evaluate the ''reserved'' status of this provision.

*Section 1193.37 Information Pass-through [1193.27 in the NPRM]*

This section requires telecommunications equipment and customer premises equipment to pass through codes, translation protocols, formats or other information necessary to provide telecommunications in an accessible format.

*Comment.* Most manufacturers pointed out that the provision as proposed could require manufacturers to anticipate any possible code or protocol another party might devise and to pass it through. Moreover, some technologies operate through ''compression'' of one sort or another and cannot be turned on or off, as suggested by the NPRM preamble. In addition, manufacturers objected to the one-sided nature of the requirement and wanted manufacturers of peripheral devices and specialized customer premises equipment to be held accountable, as well. Finally, CEMA objected to the example of closed captioning cited in the NPRM as implying that televisions were covered by the guidelines.

*Response.* The provision in the final rule has been modified by language suggested by the Trace Center to specify that the information to be passed through must be standardized and non-proprietary. Also, this provision is subject to the readily achievable criteria so that the obligation is not absolute.

The Board agrees that manufacturers of other types of equipment need to be cognizant of the capabilities of telecommunications equipment and customer premises equipment, as was strongly recommended by the TAAC. However, the statute places the responsibility for compatibility on the

telecommunications equipment and customer premises equipment manufacturer and neither the Telecommunications Act nor any other statute gives the Board authority to regulate manufacturers of peripheral devices. Specialized customer premises equipment, on the other hand, is regarded as a subset of customer premises equipment and, therefore, subject to these guidelines.

Finally, the example of closed captions cited in the NPRM was merely to illustrate the principle of information pass-through. Closed captioning is covered by other rules and regulations issued by the FCC and is not a subject of this proceeding.

*Section 1193.39 Prohibited Reduction of Accessibility, Usability and Compatibility [1193.29 in the NPRM]*

This section provides that no change shall be undertaken which decreases or has the effect of decreasing the net accessibility, usability, and compatibility of telecommunications equipment or customer premises equipment.

*Comment.* This provision was uniformly supported by disability groups, many of whom cited examples of an accessible feature or design which was later defeated by an alteration. Manufacturers, on the other hand, uniformly objected to it. Several pointed out that it was not a part of the TAAC recommendations and that it unnecessarily restricted design and innovation. For example, it seemed to prevent a manufacturer from even discontinuing an obsolete product if it had an accessibility feature unless the same feature were incorporated in its replacement. This was unreasonable, they claimed, because a newer technology might be better and more efficient but it might not be readily achievable to incorporate the same accessibility feature. Products are discontinued from time to time because they do not sell, but this provision as proposed may have required any product with an accessibility feature to be continued in perpetuity.

*Response.* Providing that no change shall be undertaken which decreases or has the effect of decreasing accessibility is a common principle in disability access codes and standards and was borrowed from both the ADA Accessibility Guidelines (ADAAG) and the Uniform Federal Accessibility Standards (UFAS). Both of these prohibit alterations which reduce or have the effect of reducing accessibility below the requirements for new construction. Those provisions were intended to apply to alterations to buildings and facilities which have a relatively static base. However, where technology is constantly changing, the principle in this rule, which is analogous to the alterations provisions of ADAAG and UFAS, may need adjusting. TIA suggested adding language that would refer to the ''net'' accessibility, usability and compatibility of products. As previously discussed, the statute does not require that a new product be both accessible and compatible, and establishes accessibility as the first priority. Since an alteration never establishes a requirement which is greater than for new construction, the same concept holds true for section 1193.39. For example, it might not be readily achievable to provide accessibility in the first iteration of a particular product, but compatibility is readily achievable. However, in an upgrade, technology or other factors may have changed so that accessibility is now readily achievable. Since the statute does not require a new product to be both accessible and compatible, a change which increased accessibility but decreased compatibility would not be prohibited. The provision has been modified accordingly.

The Board agrees that it would be unreasonable to require obsolete or unmarketable products to be maintained beyond their useful life. Since any new product introduced to replace another would be subject to the statutory requirement to provide accessibility or compatibility if readily achievable, a specific exception has been added to allow for product discontinuation. The Board does not believe this change will significantly affect the availability of accessible products. The Board intends to highlight this item for attention in its market monitoring report to determine if this provision needs to be modified in the future.

*Section 1193.41 Input, Control, and Mechanical Functions [1193.35 in the NPRM]*

This section requires product input, control and mechanical functions to be locatable, identifiable, and operable through at least one mode which meets each of the following paragraphs. This means, each of the product's input, control and mechanical functions must be evaluated against each of paragraphs (a) through (i) to ensure that there is at least one mode that meets each of those requirements. Of course, there may be one mode which meets more than one of the specific provisions. This section does not specify how the requirement is to be met but only specifies the outcome. The appendix to this rule contains a set of strategies which may help in developing solutions. In some cases, a particular strategy may be directly applicable while a different strategy may be a useful starting point for further exploration.

*Comment.* A few commenters said that it was not clear whether a single mode was to meet all of the paragraphs in this section or whether one mode was to meet paragraph (a), one mode was to meet paragraph (b), and so forth.

*Response.* In an effort to reduce the redundant language in the TAAC report, confusion may have been created in the NPRM. Therefore, the phrase ''at least one mode'' has been removed from the overall charging statement and instead repeated in the individual paragraphs. Some additional language has also been provided to clarify that each of the paragraphs (a) through (i) are to be satisfied independently. That is, it may be readily achievable to satisfy (a), (c), and (g), for example, but none of the others. Again, one mode may be able to satisfy more than one paragraph.

*Paragraph (a) Operable without vision.* No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

*Paragraph (b) Operable with low vision and limited or no hearing. Comment.* The Trace Center suggested that both the upper and lower limits for low vision be included and that the paragraph title be amended to include the restriction on audio output.

*Response.* The provision has been modified accordingly.

*Paragraph (c) Operable with little or no color perception.* No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

*Paragraph (d) Operable without hearing.* No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

*Paragraph (e) Operable with limited manual dexterity.* No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

*Paragraph (f) Operable with limited reach and strength. Comment.* In the NPRM the Board had asked (Question 6) whether the ADAAG provisions for controls and operating mechanisms and reach ranges should be included here. The few comments on this issue felt

those provisions might be too specific for these guidelines.

*Response.* The ADAAG provisions have not been added to these paragraphs but have been included in the appendix for reference, with the notation that some customer premises equipment might be covered by the ADA and required to comply with ADAAG.

*Paragraph (g) Operable without time-dependent controls. Comment.* The NPRM had proposed a three-second time limit. A few comments suggested a single number was not appropriate for different actions and that more research is needed before applying a specific time limit.

*Response.* The specific time limit has been removed and the more general performance language from the TAAC report substituted. Some of the discussion on this subject provided by the Trace Center has been included in the appendix.

*Paragraph (h) Operable without speech.* No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

*Paragraph (i) Operable with limited cognitive skills.* No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

*Section 1193.43 Output, Display, and Control Functions [1193.37 in the NPRM]*

Section 1193.43 applies to output, display, and control functions which are necessary to operate products. This includes lights and other visual displays and prompts, control labels, alphanumeric characters and text, static and dynamic images, icons, screen dialog boxes, and tones and beeps which provide operating cues or control status. Since functions requiring voice communication are more specific than the general output functions covered by this section, the Board sought comment (Question 10) on whether moving the requirements of paragraphs (b)(9) and (b)(10) to a different section would be less confusing to designers and manufacturers.

*Comment.* The Trace Center pointed out that control labels had been omitted, as well as sounds, from the list of examples. Also, Trace noted that it appeared that voice communication did not need to comply with any of the paragraphs in the NPRM except (9) and (10) and questioned whether voice communication should be treated separately. Trace speculated that this may have been done to avoid any requirement for speech-to-text translation. While this may currently not be readily achievable, recent technological advances are approaching practical translation and Trace saw no reason why such translation should not be required when it becomes readily achievable.

*Response.* The phrase ''incidental operating cues'' was intended to include sounds but ''sounds'' has been added, along with ''labels,'' and the phrase ''but not limited to'' to clarify that the list of examples is not exhaustive. In the NPRM, this section was divided into subsections (a) and (b) because the requirements for voice communication did not seem to fit with the rest of the section. Since this organization caused some confusion, the NPRM division into subsections (a) and (b) has been eliminated. Former paragraph (b)(10) has been incorporated into paragraph (e), and the paragraphs renumbered accordingly. Also, as with section 1193.41, the phrase ''at least one mode'' has been removed from the general paragraph and repeated in subsequent paragraphs to clarify that each of the paragraphs (a) through (i) are to be satisfied independently. That is, it may be readily achievable to meet the requirements of (b), (d), and (g), for example, but none of the others. Again, one mode may be able to satisfy more than one paragraph.

*Paragraph (a) Availability of visual information.* No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph.

*Paragraph (b) Availability of visual information for low vision users. Comment.* As discussed under section 1193.41 (b), a range has been included for low vision.

*Paragraph (c) Access to moving text. Comment.* The NPRM provision exempted TTYs from this provision because it assumed a person who needed static text could ask the TTY sender to pause or type slowly. The Trace Center pointed out that there are many automatic TTY messages for which this option is not possible. Also, the message recipient could not communicate the request to the sender until the sender had completed typing and transmitted ''GA.'' Trace further noted that many TTYs have a means to save text or are equipped with a printer.

*Response.* The Board agrees that automatic messages could be a problem and that one may not be able to communicate with the sender until the message has gone by. In addition, this provision applies to telecommunications equipment and customer premises equipment, not peripheral devices. Since the majority of TTYs to which this provision would apply would usually have a printer or a feature to save the message to memory for playback line by line, the Board has removed the exception.

*Paragraph (d) Availability of auditory information. Comment.* TTY to TTY long distance and message unit calls from pay telephones are often not possible because an operator says how much money must be deposited. Technology exists to have this information displayed on the telephone and an installation is currently operating at the Butler plaza on the Pennsylvania Turnpike.

*Response.* This is a good example and has been placed in the appendix. No changes have been made to this provision, other than the editorial changes mentioned in the opening paragraph.

*Paragraph (e) Availability of auditory information for people who are hard of hearing. Comment.* The majority of comments from persons who are hard of hearing reported having trouble using public pay telephones because of inadequate receiver amplification levels. These commenters supported the proposed provision that products be equipped with volume control that provides an adjustable amplification ranging from 18–25 dB of gain. However, TIA and several manufacturers cited the National Technology Transfer and Advancement Act of 1996, which requires the Federal government to make use of technical specifications and practices established by private, voluntary standards-setting bodies wherever possible. Furthermore, TIA claimed that the higher range will result in signals encroaching on the acoustic shock limits of telephone receiver output. TIA recommended that this section be revised to reflect a general performance standard, similar to the recommendation in the TAAC report. Some comments pointed out that there was no baseline signal against which the gain is to be measured. That is, for a weak signal even 18–25 dB of gain may be ineffective, while for a strong signal, the present ADAAG and FCC requirement of 12–18 dB may be sufficient. Also, industry commenters said that increasing gain may not be the only, or even the best way to provide better access since amplifying a noisy signal also amplifies the noise.

*Response.* Information submitted by SHHH indicates that the proposed gain of 25 dB is not a problem for current telephone technology. The information was based on testing conducted by two

independent laboratories (Harry Teder Ph.D., Consulting in Hearing Technology and Harry Levitt, Ph.D., Director, Rehabilitation Engineering and Research Center on Hearing Enhancement and Assistive Devices, Lexington Center). High gain phones without special circuitry currently on the market were tested which put out 90 dB and 105 dB at maximum volume setting. This is a 20 dB gain over the standard 85 dB. The sound was clear with no distortion. SHHH said that this shows that a 90 dB and 105 dB clean speech level is achieved with phones commercially available with no worse distortion levels than on public phones at normal levels. With special circuits and transducers, telephones could generate even higher amplification levels, above 25 dB, without distortion.

The current FCC standard for 12–18 dB of gain was adopted from ADAAG which requires certain public pay telephones to provide a gain of 12–18 dB. However, this provision is frequently incorrectly applied so that the gain only falls somewhere within this range but does not reach the 18 dB level. In fact, the requirement is to provide gain for the entire range of 12–18 dB.

The Board is currently reviewing all of its ADAAG provisions and will be issuing a NPRM in 1998 which will propose a new ADAAG. The changes to ADAAG will be based on recommendations of the Board's ADAAG Review Advisory Committee. That Committee recommended increasing the gain for public pay telephones from 12–18 dB to 12–20 dB. Recently, the ANSI A117.1 Committee released its 1997 ''Accessible and Usable Buildings and Facilities'' standard. This voluntary standard-setting body issues accessibility standards used by the nations model building codes. The ANSI standard requires certain public pay telephones to provide 12 dB of gain minimum and up to 20 dB maximum and that an automatic reset be provided. The 1997 ANSI A117.1 document and the Board's new ADAAG are being harmonized to minimize differences between the two documents.

Therefore, in accordance with the National Technology Transfer and Advancement Act, the final rule has been changed to adopt the provision as currently specified in the private, voluntary ANSI standard, with wording to clarify its meaning. For example, the ANSI provision was written under the assumption of an incremental, stepped volume control. If a volume adjustment is provided that allows a user to set the level anywhere from 0 to the upper requirement of 20 dB, there is no need to specify a lower limit. If a stepped volume control is provided, one of the intermediate levels must provide 12 dB of gain. Although the final rule does not provide the higher 25 dB level as proposed in the NPRM, the Board intends to highlight this provision for evaluation in its market monitoring report. If the Board's market monitoring report shows that persons with hearing impairments continue to report having trouble using telephones because the level of amplification is not high enough, the Board will re-evaluate this provision.

Recently, the FCC issued an order [5] postponing until January 1, 2000, the date by which all telephones covered by Part 68 must be equipped with a volume control. This order was issued as a response to a request for reconsideration asking that the requirement only be applied to new equipment. That request was denied but the time for compliance was extended to take into account its application to telephones already registered under Part 68.

The guidelines only apply to telecommunications equipment and customer premises equipment designed, developed and fabricated after March 5, 1998. Therefore, the guideline provision does not conflict with the FCC order. New telephones will be covered by these guidelines and existing telephones will have until January 1, 2000, to comply with the FCC Order.

*Paragraph (f) Prevention of visually induced seizures. Comment.* The NPRM suggested that the flash rate for visual indicators be set at or below 3 Hz, based on research for visual fire alarms, and asked (Question 8) whether this value was appropriate. The Epilepsy Foundation of America suggested that the value be reduced to a maximum 2 Hz, based on recent suggested changes to ADAAG and the ANSI A117.1 accessibility standard. The Trace Center also suggested the 2 Hz lower end but pointed out that some visual characteristics of video screens, for example, could not achieve that level. Trace presented data to indicate that a range of frequencies should be excluded between 2 Hz and 70 Hz.

*Response.* The provision has been revised according to the suggestion from Trace.

The NPRM also asked (Question 9) whether a similar provision should be included for seizures induced by auditory stimuli.

*Comment.* Those comments which addressed this issue said that the data are limited and that the responses seem to be very individual. At this time, there appears to be no good information on whether there are frequencies which should be avoided. The Massachusetts Assistive Technology Partnership encouraged the Board to conduct research on this issue. Trace Center noted that the provision for audio cutoff would help alleviate the problem by allowing a person with such a disability to insert a plug and cut off any external auditory cues. Since another provision of the guidelines would require the information to be conveyed visually, the person should be able to operate the product.

*Response.* The Board has not added a provision at this time but will seek further information on seizures induced by auditory stimuli.

*Paragraph (g) Availability of audio cutoff. Comment.* Comments from persons with hearing impairments supported this provision. However, some comments from both people with disabilities and manufacturers misunderstood this requirement. These comments thought the audio cutoff applied to the input rather than the output of the product, such as the input through a telephone handset.

*Response.* The provision has been reworded to clarify its application.

*Paragraph (h) Non-interference with hearing technologies. Comment.* Persons with hearing impairments uniformly supported this provision. Manufacturers, however, said it posed problems with respect to wireless telephones. They pointed out that the provision as written specified zero interference whereas, that was not physically possible. Interference could only be reduced so far, they said, and both the telephone and the hearing aid played a role. They urged the Board to defer any such requirement until the ANSI C63 Committee had finished its work. Some manufacturers also objected to the requirement's coverage of bystanders as outside the Act's jurisdiction. Also, the Trace Center viewed interference as a compatibility issue which should be addressed in Subpart D where it is repeated.

*Response.* The Board agrees that interference levels are a complex issue and cited the work of the ANSI C63 Committee in the NPRM. Interference is a function of both the hearing aid and telephone, and the C63 Committee is seeking to define ''acceptable'' levels of interference with respect to types of hearing aids and classes of telephones. The standard would also prescribe testing protocols. The Board does not believe, however, that it should defer a requirement until the ANSI Committee has finished its work, but it does expect

[5] FCC 97–242, July 17, 1997.

the Committee's work to help clarify what is readily achievable. Therefore, the provision has been modified slightly in the final rule to emphasize that products are to produce the least interference possible. In subsequent revisions to these guidelines the Board will propose standards for RF emissions and will consider the results of the ANSI C63 Committee, if they are available, in developing such standards.

For now, the reference to bystanders has been removed because a device which has reduced the interference to a level which is acceptable to the user is likely to have reduced it for a bystander as well. However, what is not known at this time is the effect another nearby wireless telephone might have on a person's ability to use a properly designed wireless telephone. That is, a person with a hearing impairment may have purchased a telephone which produces minimal interference with his or her hearing aid but finds that telephone cannot be used when in the vicinity of another wireless telephone user. The Board intends to specifically address this issue in the market monitoring report to see whether the prohibition of bystander interference should be reinstated.

Finally, this provision appears to be a compatibility issue, but it is really an accessibility one. If a hearing aid user experiences unacceptable levels of interference, the telephone is inaccessible to that person. The provision correctly belongs in Subpart C because the statute does not require telecommunications equipment and customer premises equipment to be both accessible and compatible. That is, if the provisions of Subpart C are met, the manufacturer does not need to consider the provisions of Subpart D. Furthermore, since the provisions of Subpart C are applied first, if it is not readily achievable for a manufacturer to meet this provision here, it would not be readily achievable in Subpart D either. Therefore, the provision has been removed from Subpart D.

*Paragraph (i) Hearing aid coupling.* No substantive comments were received on this provision and no changes were made, other than the editorial revisions discussed in the general section.

### Subpart D—Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment

Section 1193.51 Compatibility [1193.41 in the NPRM]

Section 1193.51 requires that when it is not readily achievable to make a product accessible, the product must be compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

*Comment.* Several commenters expressed concern that the NPRM failed to reflect adequately the shared responsibility of manufacturers of telecommunications equipment and customer premises equipment with manufacturers of peripheral devices. Nortel gave the example that electromagnetic compatibility requires both the use of proper hearing aid shielding and prevention of unwanted emissions from the customer premises equipment. Siemens pointed out that it is unrealistic, and often impossible to make equipment compatible with all potential forms of peripheral devices, unless the manufacturer controls all aspects of the affected equipment. The commenters recommended that the Board encourage peripheral device manufacturers to adhere to compatibility standards where they exist, and to develop corresponding standards for customer premises equipment and peripheral devices where they are needed but do not yet exist.

*Response.* The statute places the responsibility for compatibility on the telecommunications equipment and customer premises equipment manufacturer and neither the Telecommunications Act nor any other statute gives the Board authority to regulate manufacturers of peripheral devices. However, specialized customer premises equipment is regarded as a subset of customer premises equipment and, therefore, subject to these guidelines. As discussed earlier, the Board agrees that manufacturers of peripheral devices and other types of equipment need to be cognizant of the capabilities of telecommunications equipment and customer premises equipment.

*Comment.* The Information Technology Industry Council recommended that the compatibility requirements should recognize the differences between traditional telephony products and information technology products. Unlike traditional telephony customer premises equipment, information technology products are invariably associated with software. It is typically software, in conjunction with hardware, that enables compatibility between an information technology appliance and peripheral devices. Thus, the guidelines should acknowledge that when information technology hardware products are compatible with software that enables accessibility options and satisfies the compatibility requirements, the hardware is consistent with the compatibility guidelines.

*Response.* As the Board noted in the NPRM, ''evolving telecommunications technologies often make it difficult to distinguish whether a product's functions and interfaces are the result of the design of the product itself, or are the result of a service provider's software or even an information service format.'' These guidelines do not differentiate between hardware and software implementations of a product's functions or features, nor is any distinction made between functions and features built into the product and those that may be provided from a remote server over the network.

Paragraph (a) of the proposed rule required that information needed for the operation of a product (including output, alerts, icons, on-line help, and documentation) be available in a standard electronic text format on a cross-industry standard port. It also required that all input to and control of a product shall allow for real time operation by electronic text input into a cross-industry standard external port and in cross-industry standard format which do not require manipulation of a connector by the user. The proposed rule also provided that products shall have a cross-industry standard connector which may require manipulation.

*Comment.* The Trace Center strongly endorsed the inclusion of this provision in the final rule. In many cases, Trace said, a cross-industry standard external port, such as an infrared link, will be the only mechanism that will allow access to systems by individuals with multiple and more severe disabilities. An infrared link can also provide a mechanism for providing access to the smaller, more advanced telecommunication devices and provide a safety net for products which are unable to incorporate other technologies. Trace noted that there is a joint international effort to develop a Universal Remote Console Communication (URCC) protocol which would achieve this functionality and that existence of a standard protocol is essential to the practical implementation of this provision. Unless a standard approach is developed that both the standard product and peripheral device manufacturers can build to, it would be difficult to meaningfully comply with this provision.

Trace also noted that the NPRM would require that all products have both a wireless and a hard-wire

connection. Requiring that products have a standard physical connector is expensive. The only ports currently supported by most assistive technologies are RS232 serial ports. An infrared connector could be fitted to these serial ports on the peripheral devices to add an infrared capability to the peripheral devices. However, the opposite is not true for customer premises equipment. It is not easy to add a physical port to customer premises equipment. Trace recommended that the requirement for a physical connection point be removed.

*Response.* The Board agrees that requiring a standard physical connector on customer premises equipment may be an expensive strategy. Because an infrared connector can be inexpensively added to the serial ports on peripheral devices to add an infrared capability, the Board is deleting the requirement for a physical connection point on products covered by section 255. An appendix note has been added to alert readers that a standard has been proposed that will empower wireless communication devices, such as cellular phones, pagers and personal computers to transfer useful information over short distances using IrDA infrared data communication ports.

Paragraph (b) of the proposed rule provided that products providing auditory output must provide the auditory signal through an industry standard connector at a standard signal level.

*Comment.* The Trace Center commented that some type of a standard approach for providing audio output should be provided and that industry standard connectors already exist. Trace recommended that miniature and sub-miniature stereo jacks could meet this performance requirement. Another commenter pointed out that this requirement is particularly important for telephones that are not under the direct control of the user, such as public pay telephones and business telephones. The commenter recommended that the connecter should be capable of both input and output or two connectors should be provided.

*Response.* An appendix note recommends the use of a standard 9 mm miniature plug-in jack, common to virtually every personal tape player or radio, and for small products, a subminiature phone jack could be used. No changes have been made to this provision in the final rule.

Paragraph (c) of the proposed rule provided that products shall not cause interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) of a product user or bystander.

*Comment.* CTIA commented that the ANSI C63 Committee recognizes that the electromagnetic interaction between wireless telephones and hearing aids is an interference management issue that can be best resolved through the cooperative and joint efforts of the affected parties. Mitigation of electromagnetic interference requires an examination of both devices, i.e., the wireless telephone and the hearing aid, together, rather than in isolation.

TIA recommended that products should meet the relevant standards concerning electromagnetic compatibility, so as to function without significant interference with hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) that meet the corresponding standards for such technologies. The Trace Center pointed out that this section was repeated in Subpart C and Subpart D and that the repetition was unnecessary.

*Response.* As noted in the discussion to section 1193.43 (h), this section has been removed from Subpart D and subsequent paragraphs have been redesignated accordingly. If it is not readily achievable to manufacture a product under Subpart C that minimizes interference to hearing technologies it follows that it is also not readily achievable to make the wireless telephones and other customer premises equipment compatible with hearing technologies to minimize interference under subpart D.

Paragraph (d) of the proposed rule provided that touchscreen and touch-operated controls shall be operable without requiring body contact or close body proximity.

No substantive comments were received regarding this section and no changes have been made in the final rule other than to redesignate this provision as paragraph (c).

Paragraph (e) of the proposed rule provided that products which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. The proposed rule also provided that it shall also be possible for the user to easily turn any microphone on the product on and off to enable the user who can talk to intermix speech with TTY use.

*Comment.* Nortel recommended that standards are needed for TTYs. Absent the development of industry-wide standards for TTY data formats, it will be very difficult for customer premises equipment manufacturers to assure compliance with TTYs and that the establishment of interworking standards among various makers of TTYs will facilitate compatibility with telecommunications devices. Nortel also noted that compatibility does not ensure that usable communications will be provided, because other factors in the environment can affect the reliability of the transmissions. For example, the work that hearing aid manufacturers and handset manufacturers have jointly undertaken has greatly improved the compatibility of hearing aids with fluxcoils, but interference from outside sources (such as computers) can disrupt the usability of the handset by the hearing aid wearer.

The Trace Center strongly supported this provision. It pointed out that to meet this requirement an RJ11 plug or adaptor on a phone could be installed. Trace suggested that it now appears that a simple audio connector that could be compatible with standard headset jacks on cellular phones could be established as a standard mechanism. Such a standard could evolve that would allow TTYs to be easily connected to a wide range of phones, including miniature and subminiature phones using a simple cable.

*Response.* If a TTY is specialized customer premises equipment, it is a subset of customer premises equipment and, therefore, subject to these guidelines. The Board agrees that manufacturers of other types of equipment need to be cognizant of the capabilities of telecommunications equipment and customer premises equipment. However, as is pointed out earlier, the statute places the responsibility for compatibility on the telecommunications equipment and customer premises equipment manufacturer and neither the Telecommunications Act or any other statute gives the Board authority to regulate manufacturers of peripheral devices. No changes have been made in the final rule other than to redesignate this provision as paragraph (d).

Paragraph (f) of the proposed rule provided that products providing voice communication functionality must be able to support use of all cross-manufacturer non-proprietary standard signals used by TTYs. In addition, this paragraph would require computer modems to support protocols which are compatible with TTYs.

*Comment.* CTIA has urged the FCC to initiate a separate proceeding to revise its minimum technical standards and consider the suitability of the ITU's V.18 standard and other functional equivalents in providing reliable TTY communications through digital

wireless systems. CTIA noted that the ITU has published its draft recommendation for the V.18 standard.[6] Commenters also noted that as proposed, the provision suggested that TTY signal compatibility applied only to products which provided voice communication functionality, apparently excluding communication through a modem.

*Response.* An appendix note has been added which encourages the use of the V.18 standard. The provision has been reworded in the final rule to clarify that it applies to more than voice communication and has been redesignated as paragraph (e).

**Regulatory Process Matters**

*Executive Order 12866*

The Board has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866 since it raises novel legal or policy issues arising out of legal mandates. The Board has analyzed the benefits and costs of the rule and has determined that it is not likely to have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Although the benefits and costs are difficult to quantify, the rule is expected to have a positive economic impact. The Board has adhered to the principles of Executive Order 12866 in developing the rule and it represents a balanced and reasonable means of achieving the objectives of section 255 of the Telecommunications Act.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980, 5 U.S.C. Section 601, *et seq.*, (RFA) was enacted to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a ''significant economic impact on a substantial number of small entities.''

The Notice of Proposed Rulemaking (NPRM) issued in connection with this rulemaking contained a certification that the rule, as proposed, would not have a significant impact on a substantial number of small entities and an initial regulatory flexibility analysis was not prepared. In particular, the certification noted that manufacturers of telecommunications equipment and customer premises equipment are required to comply with section 255 of the Telecommunications Act of 1996 to the extent that it is ''readily achievable,'' which means that it is ''easily accomplishable and able to be carried out without much difficulty or expense.'' Questions were included in the notice of proposed rulemaking to elicit information on how the size of an entity should affect what is readily achievable. The notice further provided that the Board would analyze comments received to determine if a final regulatory flexibility analysis would be prepared. Though the Board did not receive comments objecting to the certification, upon review of comments received in response to the proposed rule and the questions contained in the NPRM, the Board has determined that the preparation of a Final Regulatory Flexibility Analysis (FRFA) is appropriate. Accordingly, pursuant to the RFA, the Board's FRFA is as follows:

I. Need For and Final Objectives of the Guidelines

The Access Board is responsible for developing accessibility guidelines in conjunction with the Federal Communications Commission (FCC) under section 255(e) of the Telecommunications Act of 1996 for telecommunications equipment and customer premises equipment. Telecommunications equipment is equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades). Customer premises equipment is equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications. This includes specialized customer premises equipment as a subset. The guidelines address the access needs of individuals with disabilities affecting hearing, vision, movement, manipulation, speech, and interpretation of information while balancing the resources of manufacturers of telecommunications equipment to provide accessibility features.

The guidelines do not require retrofitting of existing equipment or retooling. These guidelines are applicable only to the extent that it is readily achievable to do so. Manufacturers may consider costs and available resources when determining whether and the extent to which compliance is required.

Implementation of Section 255 of the Telecommunications Act will bring the benefits of telecommunications to potentially 48.9 million Americans with disabilities. It is anticipated that increased access to telecommunications will positively impact employment, education and the quality of life for individuals with disabilities.

II. Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Certification

The Board received a number of comments regarding the application of the term ''readily achievable''. The majority of those comments addressed the application of factors to be considered in determining whether compliance with the act was ''readily achievable''. In particular, questions were raised regarding the resources of a parent company, comparable products, fundamental alteration of a product, monetary resources, and technological expertise. The comments received by the Board in relation to the application of the term ''readily achievable'' are discussed in further detail in the Supplementary Information section above. (See 1193.3 Definitions.)

Section 255 of the Telecommunications Act defines ''readily achievable'' as having the same meaning as in the ADA. In the guidelines, ''readily achievable'' is further defined in Section 1193.3 (Definitions) as ''easily accomplishable and able to be carried out without much difficulty or expense.'' The Board expects that the FCC will ultimately set forth factors that it will use to judge compliance under the readily achievable provisions of the Telecommunications Act. In the interim, the Board has provided a list of factors derived from the ADA as advisory guidance to assist manufacturers in making readily achievable assessments. Those factors include: (a) the nature and cost of the action needed to provide accessibility or compatibility; (b) the overall resources of the manufacturer, including financial resources, technical expertise, component supply sources, equipment, or personnel; (c) the overall financial resources of any parent corporation or entity, to the extent such resources are available to the manufacturer; and (d) whether the accessibility solution results in a fundamental alteration of the product. This latter factor, derived by extension from the ''undue burden'' criteria of the ADA, takes into consideration the effect adding an accessibility feature might have on a given product.

Inherent in the concept of ''readily achievable'' is a recognition of the differences in the size and resources of

[6] ITU has published its draft recommendation for the V.18 standard. It can be accessed through the Internet at: http//tap.gallaudet.edu/V–18.htm.

manufacturers and readily achievable assessments will necessarily require a case by case determination of the impact of the regulations on small businesses.

III. Description and Estimate of the Number of Small Businesses to Which These Guidelines Will Apply

*Covered Entities:* Manufacturers of telecommunications equipment and customer premises equipment are required by § 255 of the Telecommunications Act of 1966 to ''ensure that the equipment is designed, developed and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.'' Section 1193.3 of the guidelines defines a manufacturer covered by § 255 as ''a manufacturer of telecommunications equipment or customer premises equipment that sells to the public or to vendors that sell to the public; a final assembler.'' The definitions of customer premises equipment and telecommunications equipment help to further define which manufacturers are covered by § 255:

The term ''customer premises equipment'' means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications. (See § 1193.3 Definitions)

The term ''telecommunications equipment'' means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades). (See § 1193.3 Definitions)

The Access Board guidelines cover those manufacturers of equipment that function as customer premises equipment and telecommunications equipment. Examples of customer premises equipment may include but are not limited to: wireline and wireless telephones, computers when employed on the premises of a person to originate, route or terminate telecommunications (i.e., Internet telephony or computer telephone calls with TTY software), or direct dial TTYs which ''originate, route or terminate telecommunications.'' The definition of telecommunications equipment includes switches used to direct telecommunications network services.

This rule pertains only to functions directly related to telecommunications. For example, only a computer with a modem can function as telecommunications equipment or customer premises equipment and only the modem functions are associated with telecommunications. Therefore, the requirements of this rule apply only to the modem functions (hardware and software operation), and incidental functions required for initialization (turning the computer on and launching the telecommunications program), necessary to engage in telecommunications. All other functions of the computer not related to telecommunications are not covered, such as word processing, file searching, operating system commands, and directory manipulation.

*Small Businesses*: The term ''small business'' is defined by the RFA as having the same meaning as the term ''small business concern'' under section 632 of the Small Business Act, 15 U.S.C. Sec. 632. A ''small business concern'' under Section 632 is defined as ''one which is independently owned and operated and which is not dominant in its field of operation.'' Further, Section 632(a)(2)(A) provides that the Administrator of the Small Business Administration may provide additional criteria by which a concern ''may be determined to be a small business concern.''

There are three industry categories established by the Small Business Administration which are applicable to these guidelines:

(1) Establishments primarily engaged in manufacturing wire telephone and telegraph equipment.[7] Included are establishments manufacturing modems and other telephone and telegraph communications interface equipment. Firms primarily engaged in the manufacturing of wire telephone and telegraph equipment are considered to be small businesses if they employ 1,000 or fewer employees. (See 13 CFR 121.201.) Census data indicates that there are 471 such establishments, of which 92% or 432 are small business concerns.[8]

(2) Establishments primarily engaged in manufacturing electronic computers.[9] As determined by the Small Business Administration, a manufacturer of electronic computers is considered to be a small business entity for purposes of the RFA if it has 1,000 or fewer employees. (See 13 CFR 121.201.) According to the U.S. Bureau of the Census data, there are approximately 632 such firms, of which approximately 594 or 94% percent qualify as small businesses.[10] However, not all of the entities which are engaged in manufacturing electronic computers identified in the Census data are covered entities under the Telecommunications Act. For example, a computer which does not have a modem would not be a product which is subject to the requirements of the Telecommunications Act and therefore, the manufacturing of that computer would not be a function covered by this rule.

(3) Establishments primarily engaged in manufacturing radio and television broadcasting and communications equipment.[11] These establishments are considered to be small business concerns if they employ 750 or fewer employees. (See 13 CFR 121.201.) Census data indicates that there are 826 establishments engaged in the manufacturing of radio and television broadcasting and communications equipment, of which ninety-one percent or 755 of those firms are considered small business concerns.[12] Not all of these businesses would be subject to the requirements of these guidelines. The Telecommunications Act addresses the transmittal of information between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. (See Section 1193.3 Definitions). To the extent that the radio, broadcasting or computer equipment does not meet the definition of ''telecommunications'', the manufacturing of that equipment is not a covered function subject to the Telecommunications Act or these guidelines.

IV. Description of Reporting, Recordkeeping and Other Compliance Requirements

Manufacturers of telecommunications equipment and customer premises equipment are required by Section 255 to ''ensure that the equipment is designed, developed and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.'' And when it is not ''readily achievable'' to make products accessible to and usable by individuals with disabilities, the manufacturer shall ensure that the equipment ''is compatible with existing peripheral devices or specialized customer

[7] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 3561).

[8] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1994, Table 7, SIC 3561 (U.S. Bureau of the Census data under contract to the SBA).

[9] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 3571).

[10] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1994, Table 7, SIC 3571 (U.S. Bureau of the Census data under contract to the SBA).

[11] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 3563).

[12] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1994, Table 7, SIC 3563 (U.S. Bureau of the Census data under contract to the SBA).

premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.'' [47 U.S.C. 255(b)(d)] Section 255 also places requirements on telecommunications service providers. Telecommunications service providers requirements are however under the jurisdiction of the FCC and therefore are not addressed in the Access Board guidelines.

*Section 1193.23 Product design, development and evaluation.* This section requires that, where readily achievable, manufacturers must evaluate the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment and incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers must develop a process to ensure that products are designed, developed and fabricated to be accessible whenever it is readily achievable. Since what is readily achievable will vary according to the stage of development (i.e., some things will be readily achievable in the design phase which are not in later phases), barriers to accessibility, usability, and compatibility must be identified throughout product design and development, from conceptualization to production. The details of such a process will vary from one company to the next, and this section does not specify the structure or specific content of a process. Instead, this section sets forth a series of factors that a manufacturer must consider in developing such a process. How, and to what extent, each of the factors is incorporated in a specific process is up to the manufacturer. As the capability to evaluate the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment is already available in-house, this provision will not require additional professional skills. Under these guidelines, there are no recordkeeping requirements for this provision.

There are many products for which evaluations can be relatively cursory as long as the company is confident that it is aware of all relevant access issues. At this end of the evaluation spectrum, only one hour of professional time is projected to be required, for an estimated cost of $80. At the other end of this spectrum, if there is a highly complex, convergent, or revolutionary new product this may require as much as 37.5 hours of professional evaluation throughout the product's development cycle, for an estimated cost of $3,000.

*Section 1193.33 Accessibility and usability.* Section 1193.33 requires that, where readily achievable, manufacturers must (1) provide a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge; (2) provide end-user documentation in alternate format or alternate modes upon request at no additional charge where end-user documentation is provided; (3) ensure usable customer support and technical support in the call centers and service centers which support their products at no additional charge; and (4) include in general product information, the contact method for obtaining the information required in (1) and (2) above.

In addition, where manufacturers provide employee training, they are required to provide training appropriate to an employee's function, where readily achievable. In developing, or incorporating information into existing training programs, consideration must be given to the following factors: accessibility requirements of individuals with disabilities; means of communicating with individuals with disabilities; commonly used adaptive technology used with the manufacturer's products; designing for accessibility; and solutions for accessibility and compatibility.

The greatest cost involved with compliance with this provision is in the production of alternate formats. For persons with a visual impairment, four alternate formats exist: Braille, large print, electronic text, and audio cassette. It is estimated that, where it is readily achievable to do so, the cost of alternate formats for a 10 page user's manual will involve the following:

- Braille: If the production of Braille documents is outsourced, costs range from $.25 to $2 per page, depending on the complexity of material (technical material is more expensive than literature) and the format in which the raw text arrives (print is more expensive than computer files). A reasonable estimate for producing 100 copies of a 10 page user's manual (30 bound pages of Braille) would be $1800. The cost per brailled document is estimated at $18. If Braille is produced in-house, it can be produced by clerical staff, using a standard computer, Braille translation software, and a Braille printer. It is estimated that the cost to produce a ten page document in-house would be $10. Editing a 10 page document will require approximately 15 hours of editorial time by clerical staff.
- Large Print: One hundred copies of a 10 page document would cost approximately $2.50 each to produce. The production of large print documents can be handled with clerical assistance and will involve approximately 15 hours of editorial work for a 10 page document.
- Electronic Text: Providing the information on computer disk will require an average of 15 hours of editorial work per product by clerical staff. The estimated cost of the disk, shipping and handling, is approximately $2.25 each.
- Audio Cassette: Producing the information in an audio cassette format will require approximately 15 hours of editorial work and recording time per product by clerical staff. The estimated cost of the cassette, shipping and handling is approximately $2.90 each.

*Section 1193.39 Prohibited reduction of accessibility, usability and compatibility.* Section 1193.39 provides that no change shall be undertaken which decreases or has the effect of decreasing the net accessibility, usability, and compatibility of telecommunications equipment or customer premises equipment. An exception provides that discontinuation of a product is not prohibited.

The costs for this review, would be absorbed in the analysis for the replacement or upgraded product required under 1193.23 and manufacturers should not incur additional costs under this provision.

## V. Description of Steps Taken To Minimize the Significant Economic Impact Consistent With the Stated Objectives and Significant Alternatives Considered and Rejected

In June 1996, the Access Board convened the Telecommunications Access Advisory Committee (TAAC) to assist the Board in fulfilling its mandate under section 255 of the Telecommunications Act. The members of the TAAC included representatives of small and large manufacturers of telecommunications equipment, customer premises equipment, specialized customer premises equipment, peripheral devices, and software; organizations representing the access needs of individuals with disabilities; telecommunication providers and carriers; and other persons affected by the guidelines. In addition, entities and individuals who were not members of the TAAC were invited to participate in several subcommittees and task groups. Once the TAAC had prepared a working draft of its recommendations, that draft was posted on the Internet for interested businesses and individuals to comment on. Subsequent revisions to the draft

were also posted on the Internet. The Board established a ''listserve'' on the Internet for the TAAC to conduct business between its meetings. The listserve was opened to the public to follow and many of the discussion points received from outside parties were also posted on the listserve. The result of the Committee's work was a final report containing recommendations to the Access Board for implementing section 255 of the Telecommunications Act. The Board then issued an NPRM which was based on those recommendations. In addition to a large distribution of the NPRM and the TAAC final report, the NPRM was posted on the Board's Internet page. Comments received in electronic format in response to the NPRM were also posted on the Internet for interested parties to review.

The Board received 159 comments in response to the NPRM. A further discussion of the types of comments received may be found in the Background section of this rule. The Board has addressed the majority of the comments received in General Issues and Section-by-Section Analysis above.

*Efforts to minimize impact.* (1) In implementing Section 255 of the Telecommunications Act, the Board has sought to minimize any disproportionate burdens imposed on small businesses. As previously discussed, inherent in the concept of ''readily achievable'' is a recognition of the differences in the size and resources of manufacturers. Assessments of what is readily achievable for a manufacturer to accomplish under the Telecommunications Act will necessarily require a case by case determination. In addition, where possible, the guidelines developed by the Board are written as performance standards rather than prescriptive requirements. The guidelines require an outcome, but do not prescribe in detail the process each entity much follow to achieve that outcome. As a result, small businesses will have more latitude and choice in how they comply with the requirements of the guidelines. For example, Section 1193.23 (Product design, development and evaluation) requires manufacturers to evaluate the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment and incorporate such evaluation throughout the product design, development, and fabrication, as early and consistently as possible. The Board is fully aware that different size manufacturers, or even the same manufacturer at different times, must be given the flexibility to tailor any such plan to its own particular needs. Therefore, while this section sets forth the factors which must be considered in approaching how accessibility will be provided, it does not prescribe any particular plan or content. It does not require that such a process be submitted to any entity or that it even be in writing. The requirement is outcome-oriented, and a process could range from purely conceptual to formally documented, as suits the manufacturer.

(2) The Board has included an Appendix with a list of strategies to make telecommunications equipment accessible. This list is advisory, not mandatory, and provides potential solutions for small manufacturers that do not have the resources to research and develop solutions for accessible products.

(3) Several changes were made to the final rule to reduce the impact of the rule on all manufacturers in general, and small manufacturers in particular. Those modifications include the following:

(a) The final guidelines do not require market research, testing or consultation, only that they be considered and incorporated to the extent deemed appropriate for a given manufacturer. If a large manufacturer has an extensive marketing effort, involving surveys and focus groups, it may be appropriate to include persons with disabilities in such groups. On the other hand, some small companies do not do any real marketing, per se, but may just notice that a product made by XYZ Corporation is selling well and, based on this ''marketing survey'' it decides it can make a cheaper one. Clearly, ''involvement'' of persons with disabilities is not appropriate in this case. The final provision, therefore, has been revised to make it clear that these activities are not expected to be created where none existed before. (See 1193.23 Product design, development and evaluation.)

(b) Section 1193.35 (Redundancy and selectability) has been reserved in the final rule in recognition of the complexity such a requirement might add to the design process, as well as the equipment itself. While this provision was highly supported by the disability community, the Board felt it may be premature to impose the requirement in the early stages of this regulation. Initially, manufacturers will have enough difficulty finding a single readily achievable solution to many accessibility problems. In particular, small businesses with limited resources and design staff would be hard pressed to develop multiple solutions. Instead, the Board is planning to focus its first market monitoring report on this issue and then decide whether a requirement is needed.

(c) Section 1193.37 was modified in the final rule to reduce the obligation for equipment to be designed to pass through all information for access. As proposed, the provision might have required manufacturers to constantly monitor information characteristics of all types of peripheral equipment. The final rule only requires the pass through of information presented in standard industry formats.

(d) Section 1193.39 provides that no change shall be undertaken which decreases or has the effect of decreasing the net accessibility, usability, and compatibility of telecommunications equipment or customer premises equipment. In response to concerns raised by manufacturers that this provision might prevent a manufacturer from discontinuing an obsolete product if it had an accessibility feature unless the same feature were incorporated in its replacement, an exception was added to allow for product discontinuation. In addition, the language as proposed was modified to reference the ''net'' accessibility, usability and compatibility of products.

(e) Finally, section 1193.43(e) of the final rule adopts the private sector ANSI standard for the volume level to be achieved, rather than the higher level proposed in the NPRM.

Efforts to maximize benefits. Both large and small manufacturers will be among the beneficiaries of the Telecommunications Act and these guidelines by virtue of the expanding market for accessible telecommunication products. The Electronic Industries Foundation, in its ''Resource Guide for Accessible Design of Consumer Electronics'', 1996, notes ''Today, one factor contributing to market share is the increasing number of potential customers who experience functional limitations as a result of aging or disabling conditions.... While no product can be readily used by everyone, accessible design can impact market size and market share through consideration of the functional needs of all consumers, including those who experience functional limitations as a result of aging or disabling conditions.'' A National Center for Health Statistics (NCHS) survey also indicates that people with disabilities are potentially an untapped market for the telecommunications industry. As accessibility is incorporated into new products they will be easier to use by the broadest audience possible.

Significant alternatives that were rejected. Based on the comments

received in response to the NPRM, the Board considered the application of the guidelines to product ''lines'' or ''families'' rather than individual products as long as accessible products with comparable, substantially comparable, or similar features are available at a comparable cost. However, the statutory language of the Telecommunications Act requires that all covered products must be made accessible unless it is not readily achievable to do so. As the Telecommunications Act did not provide a qualifier other than readily achievable, the guidelines developed by the Board apply to all covered products, as opposed to product lines or families. (See Section 1193.2 Scoping above for further discussion.)

VI. Report to Congress

The Access Board will forward a copy of this Final Regulatory Flexibility Analysis along with this Final Rule in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act. (5 U.S.C. 801(a)(1)(A)). A copy of this FRFA is also published in this final rule. (5 U.S.C. 604(b)).

*Unfunded Mandates Reform Act*

This final rule does not include any Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

*Paperwork Reduction Act, Collection of Information: Telecommunications Act Accessibility Guidelines*

Section 1193.33 contains information collection requirements. As required by the Paperwork Reduction Act of 1995, the Board submitted a copy of this section (previously identified as section 1193.25 in the NPRM) to the Office of Management and Budget (OMB) for its review. In addition, the Board's NPRM solicited comments on any potential paperwork burden association with these guidelines. As noted in the NPRM, the Board would consider comments received (1) in evaluating whether the proposed collection of information is necessary for the proper implementation of Section 255 of the Telecommunications Act of 1996, including whether the information will have a practical use; (2) in evaluating the accuracy of the Board's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) to enhance the quality, usefulness, and clarity of the information to be collected; and (4) to minimize the burden of collection of information on those who are to respond. The Board received 24 comments which addressed the appropriateness of the requirements of section 1193.33. The major issues raised in those comments and the Board's responses are discussed in the Section-by-Section analysis above. (See Section 1193.33). Comments which specifically addressed the costs associated with section 1193.33 and the application of the Paperwork Reduction Act are discussed below.

Summary of Significant Issues Raised by Public Comments in Response to the NPRM Paperwork Reduction Act Analysis and Annual Reporting Burden Estimate.

*Comment.* The Telecommunications Industry Association (TIA) commented that the Paperwork Reduction Act would also apply to the provision of information in alternate formats or alternate modes. The calculations provided in the Board's NPRM did not address the annual reporting burden for such costs. TIA also suggested that the costs associated with training the ''call-takers and information providers'' should be included in the public reporting and record-keeping burden estimates under the Paperwork Reduction Act.

*Response.* The Board agrees that the costs associated with providing information in alternate formats should be included in assessing the annual reporting burden associated with this section. The Board has revised its assessment to include such costs. However, to the extent that the costs of training are associated with the dispensing of technical assistance, the Board does not agree that those training costs should be included in the annual reporting burden assessments. Section 1193.33 requires that manufacturers (1) provide a description of the accessibility and compatibility features of the product upon request (including, as needed, alternate formats or alternate modes) and (2) provide end-user product documentation in alternate formats or alternate modes upon request. With respect to the reporting requirements of the Paperwork Reduction Act, only the training costs associated with responding to these requests are appropriate for inclusion in the annual reporting burden assessments.

*Comment.* TIA noted that the burdens associated with the application of this section will ''vary widely with companies and the types of equipment they manufacture.'' While TIA did not provide final data concerning the estimated annual burdens, it suggested that, based on a fragmentary sampling, the Board's estimates of the number of respondents and the accessibility/compatibility feature description and caller referral were too low. TIA agreed that the Board's estimate of five minutes for average response time was appropriate, but commented that communicating with persons with disabilities, particularly in such alternate media as TTY, may require a longer call duration. TIA questioned the Board's estimates with respect to a contact point, citing the disparity between the Board's estimates for requests for a description of the accessibility and compatibility features of the product and the provision of a name and phone number for a contact point to request additional information. TIA also questioned the Board's estimate for the burden associated with providing the contact information noting that five seconds is barely sufficient to complete the mutual introduction of consumer caller and manufacturing employee responder.

*Response.* The Board agrees that the burdens associated with the application of section 1193.33 will vary with companies and types of equipment. This is true not only because of the varying complexity of the products covered by these guidelines, but also because of the application of the concept of readily achievable. As more fully discussed in the Section-by-Section analysis above, manufacturers of telecommunications equipment and customer premises equipment are required to comply with section 255 of the Telecommunications Act of 1996 to the extent that it is ''readily achievable,'' which means that it is ''easily accomplishable and able to be carried out without much difficulty or expense.'' Readily achievable assessments will necessarily require a case by case determination based on the size and resources of manufacturers. Because actual data concerning manufacturers' future costs and resources is not available at this time, the figures provided in the annual reporting burden estimates may be high depending on the readily achievable determinations made by each manufacturer. The Board has revised its estimates of the manufacturers of telecommunication products covered by these guidelines to reflect the estimated number of manufacturers assessed in the 1992 U.S. Census; Survey of Manufacturers. That number totals 479 manufacturers.

With respect to the issue of the difference between the Board's initial assessment of the anticipated number of calls requesting a description of accessibility and compatibility features

and the anticipated number of responses per manufacturer to provide a contact point, the disparity is attributable to the fact that not all purchasers of products will request the description of features, whereas all products must contain contact point information. The estimate of five seconds is based on the Board's assessment that it will only take a negligible amount of time to include the contact information in its product literature. The annual reporting requirements do not apply to the technical assistance rendered in contacting the manufacturer at the number or address provided.

Collection of Information: Telecommunications Act Accessibility Guidelines; Annual Reporting Burden

These regulations establish guidelines for accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment covered by the Telecommunications Act of 1996. Based on the comments received in response to the NPRM, the Board has revised its estimates of the public reporting and recordkeeping burden for this collection of information. As revised, the burden is estimated to be 107,982 hours in order for manufacturers of telecommunications equipment and customer premises equipment to provide (1) a description of the accessibility and compatibility features of the equipment on request; (2) the contact method for obtaining information concerning the accessibility and compatibility description of the equipment, alternate formats and customer and technical support for the equipment; and (3) end-user product documentation in alternate formats or alternate modes upon request. Assuming there are 479 manufacturers of telecommunications equipment covered by these guidelines, the annual hour burden averages 225 hours per manufacturer.

The revised estimated burden for manufacturers to incorporate the requested information was calculated as follows:

(1) The annual hour burden associated with providing a description of the accessibility and compatibility features of the equipment on request was calculated to be 29,979 hours as follows:

| Responding to requests for information: | |
|---|---|
| Respondents | 479. |
| Average responses | ×191. |
| Hours per response | ×.08 (5 minutes). |
| Annual reporting burden. | 7,319 hours. |

Alternate formats:

Editorial (reformatting, reading for audio cassette, etc.): 22,500 hours (assuming 5,000 new products are manufactured each year and that the description of accessibility and compatibility features will average three pages that will require an average of 1.5 hours per page of editorial work).

Assuming that an average of 50% of the Braille production is performed in-house and 50% is outsourced, the impact would be 160 hours annually.

(2) The annual hour burden associated with providing the contact method to obtain information concerning the accessibility and compatibility features of the equipment, alternate formats and customer and technical support for the equipment was calculated to be 2,500 hours and was based on the following information: There are approximately 5,000 types of new telecommunications products manufactured each year or 10.44 per manufacturer. The burden in providing a contact method is in the identification of the contact method for each type of product. Once the contact method is established, the time involved in including the contact method in the existing product literature is inconsequential. The burden associated with identifying a contact method for each of the 5,000 types of new products manufactured each year is as follows:

| | |
|---|---|
| Respondents | 479. |
| Average responses | ×10.44. |
| Hours per response | ×.5 (30 minutes). |
| Annual reporting burden. | 2,500 hours. |

(3) The annual hour burden associated with providing end-user documentation in accessible formats on request was calculated to be 75,503 hours as follows:

Responding to requests for information: 0 hours. (Callers requesting alternate format will request a description of accessibility features and end-user documentation in a single call; or, the documentation will be combined in a single document. The hour burden for the request for alternate format is addressed in (1) above.

Alternate formats:

Editorial (reformatting, reading for audio cassette, etc.): 75,000 hours (assuming 5,000 new products are manufactured each year and that the end-user documentation will average ten pages)

Assuming that an average of 50% of the Braille production is performed in-house and 50% is outsourced, the impact would be 503 hours annually.

The information collection requirements contained in § 1193.33 of this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (42 U.S.C. 3501—3530), and assigned OMB control number 3014–0010. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

*Submission to Congress and the General Accounting Office*

The Board has submitted a report containing this final rule to Congress and the Comptroller General of the General Accounting Office prior to publication in the **Federal Register** as required by the Small Business Regulatory Enforcement Fairness Act of 1996. The rule is not a ''major rule'' under 5 U.S.C. 804 (2).

**List of Subjects in 36 CFR Part 1193**

Communications, Communications equipment, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Authorized by vote of the Access Board on September 10, 1997.

**Patrick D. Cannon,**

*Chair, Architectural and Transportation Barriers Compliance Board.*

For the reasons set forth in the preamble, the Board adds part 1193 to Chapter XI of title 36 of the Code of Federal Regulations to read as follows:

## PART 1193—TELECOMMUNICATIONS ACT ACCESSIBILITY GUIDELINES

### Subpart A—General

Sec.
1193.1 Purpose.
1193.2 Scoping.
1193.3 Definitions.

### Subpart B—General Requirements

1193.21 Accessibility, usability, and compatibility.
1193.23 Product design, development, and evaluation.

### Subpart C—Requirements for Accessibility and Usability

1193.31 Accessibility and usability.
1193.33 Information, documentation, and training.
1193.35 Redundancy and selectability. [Reserved]
1193.37 Information pass through.
1193.39 Prohibited reduction of accessibility, usability, and compatibility.

1193.41 Input, control, and mechanical functions.
1193.43 Output, display, and control functions.

**Subpart D—Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment**

1193.51 Compatibility.

**Appendix to Part 1193—Advisory Guidance**

**Authority:** 47 U.S.C. 255(e).

## Subpart A—General

### § 1193.1 Purpose.

This part provides requirements for accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment covered by the Telecommunications Act of 1996 (47 U.S.C. 255).

### § 1193.2 Scoping.

This part provides requirements for accessibility, usability, and compatibility of new products and existing products which undergo substantial change or upgrade, or for which new releases are distributed. This part does not apply to minor or insubstantial changes to existing products that do not affect functionality.

### § 1193.3 Definitions.

Terms used in this part shall have the specified meaning unless otherwise stated. Words, terms and phrases used in the singular include the plural, and use of the plural includes the singular.

*Accessible.* Telecommunications equipment or customer premises equipment which comply with the requirements of subpart C of this part.

*Alternate formats.* Alternate formats may include, but are not limited to, Braille, ASCII text, large print, and audio cassette recording.

*Alternate modes.* Different means of providing information to users of products including product documentation and information about the status or operation of controls. Examples of alternate modes may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and video description.

*Compatible.* Telecommunications equipment or customer premises equipment which comply with the requirements of subpart D of this part.

*Customer premises equipment.* Equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

*Manufacturer.* A manufacturer of telecommunications equipment or customer premises equipment that sells to the public or to vendors that sell to the public; a final assembler.

*Peripheral devices.* Devices employed in connection with telecommunications equipment or customer premises equipment to translate, enhance, or otherwise transform telecommunications into a form accessible to individuals with disabilities.

*Product.* Telecommunications equipment or customer premises equipment.

*Readily achievable.* Easily accomplishable and able to be carried out without much difficulty or expense.

*Specialized customer premises equipment.* Equipment, employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications, which is commonly used by individuals with disabilities to achieve access.

*Telecommunications.* The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

*Telecommunications equipment.* Equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

*Telecommunications service.* The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

*TTY.* An abbreviation for teletypewriter. Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the standard telephone network. TTYs can include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. TTYs are also called text telephones.

*Usable.* Means that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, and technical support functionally equivalent to that provided to individuals without disabilities.

## Subpart B—General Requirements

### § 1193.21 Accessibility, usability, and compatibility.

Where readily achievable, telecommunications equipment and customer premises equipment shall comply with the requirements of subpart C of this part. Where it is not readily achievable to comply with subpart C of this part, telecommunications equipment and customer premises equipment shall comply with the requirements of subpart D of this part, if readily achievable.

### § 1193.23 Product design, development, and evaluation.

(a) Manufacturers shall evaluate the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment and shall incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers shall identify barriers to accessibility and usability as part of such a product design and development process.

(b) In developing such a process, manufacturers shall consider the following factors, as the manufacturer deems appropriate:

(1) Where market research is undertaken, including individuals with disabilities in target populations of such research;

(2) Where product design, testing, pilot demonstrations, and product trials are conducted, including individuals with disabilities in such activities;

(3) Working cooperatively with appropriate disability-related organizations; and

(4) Making reasonable efforts to validate any unproven access solutions through testing with individuals with disabilities or with appropriate disability-related organizations that have established expertise with individuals with disabilities.

## Subpart C—Requirements for Accessibility and Usability

### § 1193.31 Accessibility and usability.

When required by § 1193.21, telecommunications equipment and customer premises equipment shall be accessible to and usable by individuals with disabilities and shall comply with §§ 1193.33 through 1193.43 as applicable.

### § 1193.33 Information, documentation, and training.

(a) Manufacturers shall ensure access to information and documentation it provides to its customers. Such information and documentation includes user guides, installation guides for end-user installable devices, and product support communications, regarding both the product in general

and the accessibility features of the product. Manufacturers shall take such other steps as necessary including:

(1) Providing a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge;

(2) Providing end-user product documentation in alternate formats or alternate modes upon request at no additional charge; and

(3) Ensuring usable customer support and technical support in the call centers and service centers which support their products at no additional charge.

(b) Manufacturers shall include in general product information the contact method for obtaining the information required by paragraph (a) of this section.

(c) Where manufacturers provide employee training, they shall ensure it is appropriate to an employee's function. In developing, or incorporating existing training programs, consideration shall be given to the following factors:

(1) Accessibility requirements of individuals with disabilities;

(2) Means of communicating with individuals with disabilities;

(3) Commonly used adaptive technology used with the manufacturer's products;

(4) Designing for accessibility; and

(5) Solutions for accessibility and compatibility.

#### § 1193.35 Redundancy and selectability. [Reserved]

#### § 1193.37 Information pass through.

Telecommunications equipment and customer premises equipment shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide telecommunications in an accessible format. In particular, signal compression technologies shall not remove information needed for access or shall restore it upon decompression.

#### § 1193.39 Prohibited reduction of accessibility, usability, and compatibility.

(a) No change shall be undertaken which decreases or has the effect of decreasing the net accessibility, usability, or compatibility of telecommunications equipment or customer premises equipment.

(b) Exception: Discontinuation of a product shall not be prohibited.

#### § 1193.41 Input, control, and mechanical functions.

Input, control, and mechanical functions shall be locatable, identifiable, and operable in accordance with each of the following, assessed independently:

(a) *Operable without vision.* Provide at least one mode that does not require user vision.

(b) *Operable with low vision and limited or no hearing.* Provide at least one mode that permits operation by users with visual acuity between 20/70 and 20/200, without relying on audio output.

(c) *Operable with little or no color perception.* Provide at least one mode that does not require user color perception.

(d) *Operable without hearing.* Provide at least one mode that does not require user auditory perception.

(e) *Operable with limited manual dexterity.* Provide at least one mode that does not require user fine motor control or simultaneous actions.

(f) *Operable with limited reach and strength.* Provide at least one mode that is operable with user limited reach and strength.

(g) *Operable without time-dependent controls.* Provide at least one mode that does not require a response time. Alternatively, a response time may be required if it can be by-passed or adjusted by the user over a wide range.

(h) *Operable without speech.* Provide at least one mode that does not require user speech.

(i) *Operable with limited cognitive skills.* Provide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user.

#### § 1193.43 Output, display, and control functions.

All information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cues, shall comply with each of the following, assessed independently:

(a) *Availability of visual information.* Provide visual information through at least one mode in auditory form.

(b) *Availability of visual information for low vision users.* Provide visual information through at least one mode to users with visual acuity between 20/70 and 20/200 without relying on audio.

(c) *Access to moving text.* Provide moving text in at least one static presentation mode at the option of the user.

(d) *Availability of auditory information.* Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form.

(e) *Availability of auditory information for people who are hard of hearing.* Provide audio or acoustic information, including any auditory feedback tones that are important for the use of the product, through at least one mode in enhanced auditory fashion (i.e., increased amplification, increased signal-to-noise ratio, or combination). For transmitted voice signals, provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, provide at least one intermediate step of 12 dB of gain.

(f) *Prevention of visually-induced seizures.* Visual displays and indicators shall minimize visual flicker that might induce seizures in people with photosensitive epilepsy.

(g) *Availability of audio cutoff.* Where a product delivers audio output through an external speaker, provide an industry standard connector for headphones or personal listening devices (e.g., phone-like handset or earcup) which cuts off the speaker(s) when used.

(h) *Non-interference with hearing technologies.* Reduce interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) to the lowest possible level that allows a user to utilize the product.

(i) *Hearing aid coupling.* Where a product delivers output by an audio transducer which is normally held up to the ear, provide a means for effective wireless coupling to hearing aids.

### Subpart D—Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment

#### § 1193.51 Compatibility.

When required by subpart B of this part, telecommunications equipment and customer premises equipment shall be compatible with peripheral devices and specialized customer premises equipment commonly used by individuals with disabilities to achieve accessibility, and shall comply with the following provisions, as applicable:

(a) *External electronic access to all information and control mechanisms.* Information needed for the operation of products (including output, alerts, icons, on-line help, and documentation) shall be available in a standard electronic text format on a cross-industry standard port and all input to and control of a product shall allow for real time operation by electronic text input into a cross-industry standard external port and in cross-industry standard format. The cross-industry standard port shall not require manipulation of a connector by the user.

(b) *Connection point for external audio processing devices.* Products providing auditory output shall provide the auditory signal at a standard signal

level through an industry standard connector.

(c) *Compatibility of controls with prosthetics.* Touchscreen and touch-operated controls shall be operable without requiring body contact or close body proximity.

(d) *TTY connectability.* Products which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. It shall also be possible for the user to easily turn any microphone on and off to allow the user to intermix speech with TTY use.

(e) *TTY signal compatibility.* Products, including those providing voice communication functionality, shall support use of all cross-manufacturer non-proprietary standard signals used by TTYs.

## Appendix to Part 1193—Advisory Guidance

### Introduction

1. This appendix provides examples of strategies and notes to assist in understanding the guidelines and are a source of ideas for alternate strategies for achieving accessibility. These strategies and notes are not mandatory. A manufacturer is not required to incorporate all of these examples or any specific example. Manufacturers are free to use these or other strategies in addressing the guidelines. The examples listed here are not comprehensive, nor does adopting or incorporating them guarantee an accessible product. They are meant to provide a useful starting point for evaluating the accessibility of a product or conceptual design and are not intended to inhibit innovation. For a more complete list of all of the published strategies to date, as well as for further information and links to on-going discussions, the reader is referred to the National Institute on Disability and Rehabilitation Research's Rehabilitation Engineering Center on Access to Telecommunications System's strategies Web site (http://trace.wisc.edu/world/telecomm/).

2. This appendix is organized to correspond to the sections and paragraphs of the guidelines in this part to which the explanatory material relates. This appendix does not contain explanatory material for every section and paragraph of the guidelines in this part.

### Subpart A—General

*Section 1193.3 Definitions*

Readily Achievable

1. Section 255 defines ''readily achievable'' as having the same meaning as in the Americans with Disabilities Act (ADA). However, the ADA applies the term to the removal of barriers in existing public accommodations. Not all of the factors cited in the ADA or the Department of Justice (DOJ) implementing regulations (July 26, 1991) are easy to translate to the telecommunications context where the term applies to telecommunications equipment and customer premises equipment which is designed, developed and fabricated after February 8, 1996, the effective date of the Telecommunications Act of 1996.

2. It may not be readily achievable to make every product accessible or compatible. Depending on the design, technology, or several other factors, it may be determined that providing accessibility to all products in a product line is not readily achievable. The guidelines do not require accessibility or compatibility when that determination has been made, and it is up to the manufacturer to make it. However, the assessment as to whether it is or is not readily achievable cannot be bypassed simply because another product is already accessible. For this purpose, two products are considered to be different if they have different functions or features. Products which differ only cosmetically, where such differences do not affect functionality, are not considered separate products.

3. Below is a list of factors provided as interim guidance to manufacturers to assist them in making readily achievable assessments. The factors are derived from the ADA itself and the DOJ regulations and are presented in the order in which they appear in those sources. Ultimately, the priority or weight of these factors is a compliance issue, under the jurisdiction of the Federal Communications Commission (FCC). Factors applicable to a determination of whether an action is readily achievable include: the nature and cost of the action needed to provide accessibility or compatibility; the overall resources of the manufacturer, including financial resources, technical expertise, component supply sources, equipment, or personnel; the overall financial resources of any parent corporation or entity, only to the extent such resources are available to the manufacturer; and whether the accessibility solution results in a fundamental alteration of the product.

a. One factor in making readily achievable assessments is the nature and cost of the action needed to provide accessibility or compatibility. The term readily achievable means that an action is ''easily accomplishable and able to be carried out without much difficulty or expense.'' The nature of the action or solution involves how easy it is to accomplish, including the availability of technology and expertise, and the ability to incorporate the solution into the production process. Obviously, knowing about an accessibility solution, even in detail, does not mean it is readily achievable for a specific manufacturer to implement it immediately. Even if it only requires substituting a different, compatible part, the new part must be ordered and integrated into the manufacturing process. A more extreme implementation might require re-tooling or redesign. On the other hand, a given solution might be so similar to the current design, development and fabrication process that it is readily achievable to implement it virtually overnight.

b. Another factor in making readily achievable assessments is the overall resources of the manufacturer, including financial resources, technical expertise, component supply sources, equipment, or personnel. The monetary resources of a manufacturer are obviously a factor in determining whether an action is readily achievable, but it may be appropriate to consider other resources, as well. For example, a company might have ample financial resources and, at first glance, appear to have no reason for not including a particular accessibility feature in a given product. However, it might be that the company lacks personnel with experience in software development, for example, needed to implement the design solution. One might reason that, if the financial resources are available, the company should hire the appropriate personnel, but, if it does, it may no longer have the financial resources to implement the design solution. One would expect that the company would develop the technical expertise over time and that eventually the access solution might become readily achievable.

c. Another factor in making readily achievable assessments is the overall financial resources of any parent corporation or entity, only to the extent such resources are available to the manufacturer. Both the ADA statutory definition of readily achievable and the DOJ regulations define the resources of a parent company as a factor. However, such resources are considered only to the extent those resources are available to the subsidiary. If, for example, the subsidiary is responsible for product design but the parent company is responsible for overall marketing, it may be appropriate to expect the parent company to address some of the marketing goals. If, on the other hand, the resources of a parent company are not available to the subsidiary, they may not be relevant. This determination would be made on a case-by-case basis.

d. A fourth factor in making readily achievable assessments is whether the accessibility solution results in a fundamental alteration of the product. This factor, derived by extension from the ''undue burden'' criteria of the ADA, takes into consideration the effect adding an accessibility feature might have on a given product. For example, it may not be readily achievable to add a large display for low vision users to a small pager designed to fit in a pocket, because making the device significantly larger would be a fundamental alteration of the device. On the other hand, adding a voice output may not involve a fundamental alteration and would serve both blind and low vision users. In addition, adding an infrared port might be readily achievable and would allow a large-display peripheral device to be coupled to it. Of course fundamental alteration means a change in the fundamental characteristic of the product, not merely a cosmetic or esthetic change.

### Subpart B—General Requirements

*Section 1193.23 Product Design, Development and Evaluation*

Paragraph (a)

1. This section requires manufacturers to evaluate the accessibility, usability, and compatibility of telecommunications

equipment and customer premises equipment and incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers must develop a process to ensure that products are designed, developed and fabricated to be accessible whenever it is readily achievable. Since what is readily achievable will vary according to the stage of development (i.e., some things will be readily achievable in the design phase which may not be in later phases), barriers to accessibility and usability must be identified throughout product design and development, from conceptualization to production. Moreover, usability can be seriously affected even after production, if information is not provided in an effective manner.

2. The details of such an evaluation process will vary from one company to the next, so this section does not specify its structure or specific content. Instead, this section sets forth a series of factors that a manufacturer must consider in developing such a process. How, and to what extent, each of the factors is incorporated in a specific process is up to the manufacturer.

3. Different manufacturers, or even the same manufacturer at different times, have the flexibility to tailor any such plan to its own particular needs. This section does not prescribe any particular plan or content. It does not require that such a process be submitted to any entity or that it even be in writing. The requirement is outcome-oriented, and a process could range from purely conceptual to formally documented, as suits the manufacturer.

4. The goal is for designers to be aware of access and incorporate such considerations in the conceptualization of new products. When an idea is just beginning to take shape, a designer would ask, ''How would a blind person use this product? How would a deaf person use it?'' The sooner a manufacturer makes its design team cognizant of design issues for achieving accessibility; and proven solutions for accessibility and compatibility, the easier this process will be.

Paragraph (b)(1)

Market Research

1. The guidelines do not require market research, testing or consultation, only that they be considered and incorporated to the extent deemed appropriate for a given manufacturer. If a manufacturer has a large marketing effort, involving surveys and focus groups, it may be appropriate to include persons with disabilities in such groups. On the other hand, some small companies do not do any real marketing, per se, but may just notice that a product made by XYZ Corporation is selling well and, based on this ''marketing survey'' it decides it can make a cheaper one. Clearly, ''involvement'' of persons with disabilities is not appropriate in this case.

2. A manufacturer must consider how it could include individuals with disabilities in target populations of market research. It is important to realize that any target population for which a manufacturer might wish to focus a product contains individuals with disabilities, whether it is teenagers, single parents, women between the ages of 25 and 40, or any other subgroup, no matter how narrowly defined. Any market research which excludes individuals with disabilities will be deficient.

Paragraph (b)(2)

Product Design, Testing, Pilot Demonstrations, and Product Trials

1. Including individuals with disabilities in product design, testing, pilot demonstrations, and product trials will encourage appropriate design solutions to accessibility barriers. In addition, such involvement may result in designs which have an appeal to a broader market.

Paragraph (b)(3)

Working Cooperatively With Appropriate Disability-Related Organizations

1. Working cooperatively with appropriate disability-related organizations is one of the factors that manufacturers must consider in their product design and development process. The primary reason for working cooperatively is to exchange relevant information. This is a two-way process since the manufacturer will get information on barriers to the use of its products, and may also be alerted to possible sources for solutions. The process will also serve to inform individuals with disabilities about what is readily achievable. In addition, manufacturers will have a conduit to a source of subjects for market research and product trials.

2. Manufacturers should consult with representatives from a cross-section of disability groups, particularly individuals whose disabilities affect hearing, vision, movement, manipulation, speech, and interpretation of information.

3. Because of the complex interrelationship between equipment and services in providing accessibility to telecommunications products, coordination and cooperation between manufacturers and service providers will be beneficial. Involving service providers in the product development process will encourage appropriate design solutions to accessibility barriers and permit the exchange of relevant information.

Paragraph (b)(4)

Making Reasonable Efforts to Validate Unproven Access Solutions

1. Manufacturers must consider how they can make reasonable efforts to validate any unproven access solutions through testing with individuals with disabilities or with appropriate disability-related organizations that have established expertise with individuals with disabilities. It is important to obtain input from persons or organizations with established expertise to ensure that input is not based merely on individual preferences or limited experience.

2. This input should be sought from representatives from a cross-section of disability groups, particularly individuals whose disabilities affect hearing, vision, movement, manipulation, speech, and interpretation of information.

**Subpart C—Requirements for Accessibility and Usability**

*Section 1193.33 Information, Documentation, and Training*

Paragraph (a)

1. This section requires that manufacturers provide access to information and documentation. The information and documentation includes user guides, installation guides, and product support communications, regarding both the product in general and the accessibility features of the product. Information and documentation should be provided to people with disabilities at no additional charge. Alternate formats or alternate modes of this information is also required to be available. Manufacturers should also encourage distributors of their products to establish information dissemination and technical support programs similar to those established by the manufacturer.

Alternate Formats and Alternate Modes

1. Alternate formats may include, but are not limited to, Braille, ASCII text, large print, and audio cassette recording. Alternate modes may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and video description.

2. In considering how to best provide product information to people with disabilities, it is essential that information be provided in an alternate format or mode that is usable by the person needing the information. For example, some individuals who are blind might require a manual in Braille to understand and use the product effectively. Other persons who are blind may prefer this information on a computer disk. Persons with limited reading skills may need this information recorded on audio cassette tape so they can listen to the manual. Still other persons with low vision may be able to read the text version of the manual if it is provided in a larger font. Likewise, if a tutorial video is provided, persons who are deaf may require a captioned version so that they will understand how to use the product effectively. Finally, individuals who rely on TTYs will need direct TTY access to a customer service line so they can ask questions about a product like everyone else.

3. This portion of the appendix explains how to provide information in alternate formats (Braille, ASCII text, large print, audio cassette) to persons with disabilities.[1]

Braille

4. Some persons who are blind rely on the use of Braille in order to obtain information that is typically provided in print. These persons may need Braille because of the nature of their disability (such as persons who are deaf-blind) or because of the complexity of the material. Most large urban areas have companies or organizations which can translate printed material to Braille. On the other hand, manufacturers may wish to consider producing Braille documents ''in house'' using a personal computer, Braille translation software, and a Braille printer.

[1] This information was provided by the American Foundation for the Blind.

The disadvantage is the difficulty in ensuring quality control and accuracy. Software programs exist which can translate common word processing formats directly into Braille, but they are not always error free, especially if the document contains special characters, jargon, graphics, or charts. Since the typical office worker will not be able to proofread a Braille document, the initial apparent cost saving may be quickly lost by having to re-do documents. The Braille translation software costs approximately $500 and most Braille printers sold range from $2,000 to $5,000, however some Braille printers, depending on the speed and other features, do cost more. Depending on the quality of Braille to be generated, a Braille printer in the $4,000 range should be adequate for most users. By using automatic translation software, individuals who do not have knowledge of Braille or who have limited computer skills may be able to produce simple Braille documents without much trouble. If the document is of a complex format, however, such as a text box over multiple columns, a sophisticated knowledge of Braille translation software and formatting will be required.

Electronic Text

5. People who are blind or have low vision and who have access to computers may be able to use documents in electronic form. Electronic text must be provided in ASCII or a properly formatted word processor file. Using electronic text allows this information to be transmitted through e-mail or other on-line telecommunications. Blind or low vision persons who have access to a personal computer can then read the document using synthetic speech, an electronic Braille display, a large print computer monitor, or they can produce a hard copy in large print or Braille.

6. Documents prepared for electronic transmission should be in ASCII. Documents supplied on disk should also be provided in either ASCII or a word processor format usable by the customer. Word processing documents should be properly formatted before distribution or conversion to ASCII. To be correctly formatted, the document should be in Courier 10 point size and formatted for an 80 character line. Tables should be converted to plain text. Graphics or text boxes should be deleted and explained or described in text format. This will allow the reader to understand all of the documentation being presented. Replace bullets (•) with ''*'' or ''-'' and convert other extended ASCII characters into text. When converting a document into ASCII or word processor formats, it is important to utilize the appropriate ''tab key'' and ''centering key'' rather than using the space bar. This is necessary because Braille translation software relies on the proper use of commands to automate the formatting of a Braille document.

Large Print

7. Persons with low vision may require documentation to be provided in large print. Large print documents can easily be produced using a scalable font from any good word processing program and a standard laser printer. Using the document enlargement option on a photocopier will usually yield unsatisfactory results.

8. To obtain the best results follow these guidelines:

a. It is preferable to use paper that is standard 8½ x 11 inches. Larger paper may be used, but care should be taken that a document does not become too bulky, thus making it difficult to read. Always use 1 inch margins. Lines longer than 6⅓ inches will not track well for individuals who must use a magnifier.

b. The best contrast with the least glare is achieved on very pale yellow or cream-colored non-glossy paper, such as paper that is used for photocopying purposes. To produce a more aesthetic looking document, an off-white paper may be used and will still give good contrast while producing less glare than white. Do not use dark colors and shades of red. Double-sided copying (if print does not bleed through) will produce a less bulky document.

c. Remove formatting codes that can make reading more difficult. For example, centered or indented text could be difficult to track because only a few words will fit on a line. All text should begin at the left margin. Use only left margin justification to maintain uniform spacing across lines. Right margin justification can produce uneven spacing between letters and words. Use 1¼ (1.25) line spacing; do not double space. Replace tabs with two spaces. Page numbering should be at the top or bottom left. Avoid columns. If columns are absolutely necessary, use minimum space between columns. Use dot leaders for tabular material. For those individuals who are able to read graphics (via the use of a magnifier or other assistive device) graphics should be included, but placed on a separate page from the text. For those individuals with low vision who are unable to read graphics, tables, and charts this material must be removed from the document and an accurate description of this material should be included in a text format.

d. There is no standard typeface or point size. For more universal access, use 18 point type; anything larger could make text too choppy to read comfortably. Use a good strong bold typeface. Do not use italics, fine, or fancy typefaces. Do not use compressed typefaces; there should be normal ''white space'' between characters.

e. Use upper and lowercase letters.

f. Using these instructions, one page of print (11–12 point type) will equal approximately three pages of large print (14–18 point) depending on the density of the text.

Cassette Recordings

9. Some persons who are blind or who have learning disabilities may require documentation on audio cassettes. Audio materials can be produced commercially or in-house. Agencies sometimes record material in-house and purchase a high speed tape duplicator ($1,000–2,000) which is used to make cassette copies from the master. The cost of a duplicator can be higher depending upon the number of copies produced on a single run, and whether the duplicator can produce standard speed two-sided copies or half-speed four-sided copies. Although unit costs can be reduced by using the four-track, half-speed format, this will require the reader to use a specially designed playback machine. Tapes should be produced with ''tone indexing'' to allow a user to skip back and forth from one section to another. By following a few simple guidelines for selecting readers and creating recordings, most organizations will be able to successfully record most simple documents.

10. Further guidance in making cassette recordings includes:

a. The reader should be proficient in the language being recorded.

b. The reader should be familiar with the subject. Someone who is somewhat familiar with the technical aspects of a product but who can explain functions in ordinary language would be a logical person to record an audio cassette.

c. The reader should have good diction. Recording should be done in a conversational tone and at a conversational pace; neither too slow nor too fast.

d. The reader should be familiar with the material to minimize stumbling and hesitation.

e. The reader should not editorialize. When recording a document, it should be read in full. Graphic and pictorial information available to sighted readers should be described in the narrated text. Tables and charts whose contents are not already contained in text should be converted into text and included in the recording.

f. The reader should spell difficult or unusual words and words of foreign origin.

g. At the beginning of the tape, identify the reader, i.e., ''This document is being read by John Smith.''

h. On each side of the tape, identify the document and the page number where the reader is continuing, i.e., ''tape 2, side 1, Guide to Barrier Free Meetings, continuing on page 75.''

i. For blind users, all cassettes should be labeled in Braille so that they can easily be referenced in the appropriate order.

Alternate Modes

11. Information is provided increasingly through a variety of means including television advertisements, Internet postings, information seminars, and telephone. This portion of the appendix explains how to provide information in some alternate modes (captioning, video description, Internet postings, relay service, and TTY).

Captioning

12. When manufacturers of telecommunications equipment or customer premises equipment provide videos with their products (such as tutorials or information explaining various components of a product) the video should be available with captioning. Closed captioning refers to assistive technology designed to provide access to television for persons with hearing disabilities that is visible only through the use of a decoder. Open captions are visible at all times. Captioning is similar to subtitles in that the audio portion of a television program is displayed as printed words on the television screen. Captions should be carefully placed to identify speakers, on-and off-screen sound effects, music and laughter. Increased captioning was made possible

because of the Television Decoder Circuitry Act which requires all television sets sold in the United States with screens 13 inches or larger to have built-in decoder circuitry.

13. Although captioning technology was developed specifically to make television and video presentations accessible to deaf and hard of hearing people, there has been widespread interest in using this technology to provide similar access to meetings, classroom teaching, and conferences. For meetings, video-conferences, information seminars, and the like, real-time captioning is sometimes provided. Real-time captioning uses a stenographic machine connected to a computer with translation software. The output is then displayed on a monitor or projected on a screen.

Video Description

14. Just as manufacturers of telecommunications equipment and customer premises equipment need to make their videos accessible to persons who are deaf or hard of hearing, they must also be accessible to persons who are blind or have low vision. This process is known as video description. Video description may either be a separate audio track that can be played simultaneously with the regular audio portion of the video material (adding description during pauses in the regular audio), or it can be added to (or ''mixed'' with) an existing soundtrack. The latter is the technique used for videotapes.

Internet Postings

15. The fastest growing way to obtain information about a product is through use of the Internet, and specifically the World Wide Web. However, many Internet users with disabilities have difficulty obtaining this information if it is not correctly formatted. This section provides information on how to make a World Wide Web site more accessible to persons with disabilities[2]. Because of its structure, the Web provides tremendous power and flexibility in presenting information in multiple formats (text, audio, video, and graphic). However, the features that provide power and elegance for some users present potential barriers for people with sensory disabilities. The indiscriminate use of graphic images and video restrict access for people who are blind or have low vision. Use of audio and non-captioned video restrict access for people who are deaf or hard of hearing.

16. The level of accessibility of the information on the Web is dependent on the format of the information, the transmission media, and the display system. Many of the issues related to the transmission media and the display system cannot be affected by the general user. On the other hand, anyone creating information for a Web server has control of the accessibility of the information. Careful design and coding of information will provide access to all people without compromising the power and elegance of the Web site.

17. A few suggestions are:

a. Every graphic image should have associated text. This will enable a person using a character-based program, such as Lynx, to understand the material being presented in the graphical format. It also allows anyone who does not want to wait for graphics to load to have quick access to the information on the site.

b. Provide text transcriptions or descriptions for all audio output. This will enable people who are deaf or hard of hearing to have access to this information, as well as individuals who do not have sound cards.

c. Make any link text descriptive, but not verbose. For example, words like ''this'', ''here'', and ''click'' do not convey enough information about the nature of the link, especially to people who are blind. Link text should consist of substantive, descriptive words which can be quickly reviewed by the user. Conversely, link text which is too long bogs down efficient browsing.

d. Provide alternate mechanisms for on-line forms. Forms are not supported by all browsers. Therefore, it is important to provide the user with an opportunity to select alternate methods to access such forms.

e. All Web pages should be tested using multiple viewers. At a minimum, pages should be tested with the latest version of Lynx to ensure that they can be used with screen reader software.

Telecommunications Relay Services (TRS)

18. By using telecommunications relay services (TRS), it has now become easier for persons with hearing and speech disabilities to communicate by the telephone. TRS links TTY users with those who do not have a TTY and use standard telephones. With TRS, a TTY user communicates with another person with the help of a communications assistant who is able to talk on the telephone and then communicate by typing the message verbatim, to the TTY user. The communications assistant also reads the message typed by the TTY user, or the TTY user may speak for him or herself using voice carry over.

19. There are now TRS programs in every state. Although TRS is very valuable, it does have limitations. For example, relay calls take longer, since they always involve a third party, and typing words takes longer than speaking words.

Text Telephones (TTYs)

20. A TTY also provides direct two-way typed conversations. The cost of these devices begins at approximately $200 and they can be operated by anyone who can type.

21. The following information is excerpted from the brochure ''Using a TTY'' which is available free of charge from the Access Board:

a. If the TTY line is also used for incoming voice calls, be sure the person who answers the phone knows how to recognize and answer a TTY call. You will usually hear silence, a high-pitched, electronic beeping sound, or a pre-recorded voice message when it is a TTY call. If there is silence, assume it is a TTY call.

b. TTYs should be placed near a standard telephone so there is minimal delay in answering incoming TTY calls.

c. To initiate a TTY call, place the telephone headset in the acoustic cups of the TTY adapter. If the TTY unit is directly connected to the phone line, there is no need to put the telephone headset in the acoustic cups. Turn the TTY on. Make sure there is a dial tone by checking for a steady light on the TTY status indicator.

d. Dial the number and watch the status indicator light to see if the dialed number is ringing. The ring will make a long slow flash or two short flashes with a pause in between. If the line is busy, you will see short, continuous flashes on the indicator light. When the phone is answered, you will see an irregular light signal as the phone is picked up and placed in the cradle. If you are calling a combination TTY and voice number, tap the space bar several times to help the person on the other end identify this as a TTY call.

e. The person who answers the call is the first to type. Answer the phone as you would by voice, then type ''GA''.

f. ''GA'' means ''I'm done, go ahead and type''. ''HD'' means hold. ''GA or SK'' means ''Is there anything more, I'm done''. ''SK'' means stop keying. This is how you show that the conversation is ended and that you will hang up. It is polite to type good-bye, thank you for calling, or some other closing remark before you type ''SK''. Stay on the line until both parties type SKSK.

22. Because of the amount of time it takes to send and receive messages, it is important to remember that short words and sentences are desired by both parties. With some TTY calls it is often not possible to interrupt when the other person is typing. If you get a garbled message in all numbers or mixed numbers and letters, tap the space bar and see if the message clears up. If not, when the person stops typing, you should type, ''Message garbled, please repeat.'' If the garbled messages continue, this may mean that one of the TTYs is not working properly, there is background noise causing interference, or that you may have a bad connection. In this case you should say something like, ''Let's hang up and I'll call you back.''

23. The typical TTY message will include many abbreviations and jargon. The message may also include misspelled words because, if the meaning is clear, many callers will not bother to correct spelling since it takes more time. Also, some TTY users communicate in American sign language, a language with its own grammar and syntax. English may be a second language. Extend the same patience and courtesy to TTY callers as you do to all others.

Paragraph (b)

1. This paragraph requires manufacturers to supply a point of contact for obtaining information about accessibility features of the product and how to obtain documents in alternate formats. This could be the name of a specific person, a department or an office. Supplying a telephone number, and preferably a separate TTY number, is the most universal method. Web site and e-mail

[2] This information is based on the document ''Writing HTML Documents and Implementing Accessibility for the World Wide Web'' by Paul Fountaine, Center for Information Technology Accommodation, General Services Administration. For further information, see http:// www.gsa.gov/coca.

addresses are also desirable, but should not substitute for a telephone number since many more people have access to a telephone than have e-mail or Internet access. Of course, the means for requesting additional accessibility information must, itself, be accessible.

2. Automated voice response systems are not usable by deaf and hard of hearing persons. An approach to consider is to augment an automated voice response system with an automated TTY response system that also detects whether a caller is using voice or TTY.

3. The phone number should be prominently displayed in product literature. Ideally, it should be displayed on the outside of the package so that a potential buyer can obtain information about the accessibility before purchase. In addition, manufacturers should acquaint their distributors with this information so that they can assist customers with disabilities, such as a blind person unable to read the package information.

Paragraph (c)

1. This paragraph requires manufacturers to consider including information on accessibility in training a manufacturer provides to its staff. For example, if technical support staff are trained on how to provide good technical support, such a program should be expanded to include information on accessibility features of the manufacturer's products and peripheral devices that are compatible with them. Such staff should also have basic information on how to handle TTY and relay calls. Personnel who deal directly with the public, including market researchers, should be trained in basic disability ''etiquette.''

*Section 1193.35 Redundancy and Selectability [Reserved]*

1. Although this section is reserved, manufacturers of telecommunications equipment and customer premises equipment are encouraged to provide redundancy such that input and output functions are available in more than one mode.

2. Alternate input and output modes should be selectable by the user.

3. Products should incorporate multiple modes for input and output functions so the user is able to select the desired mode.

a. Since there is no single interface design that accommodates all disabilities, accessibility is likely to be accomplished through various product designs which emphasize interface flexibility to maximize user configurability and multiple, alternative and redundant modalities of input and output.

b. Selectability is especially important where an accessibility feature for one group of individuals with disabilities may conflict with an accessibility feature for another. This potential problem could be solved by allowing the user to switch one of the features on and off. For example, a conflict may arise between captioning (provided for persons who are deaf or hard of hearing) and a large font size (provided for persons with low vision). The resulting caption would either be so large that it obscures the screen or need to be scrolled or displayed in segments for a very short period of time.

c. It may not be readily achievable to provide all input and output functions in a single product or to permit all functions to be selectable. For example, switching requires control mechanisms which must be accessible and it may be more practical to have multiple modes running simultaneously. Whenever possible, it is preferable for the user to be able to turn on or off a particular mode.

4. Some experiments with smart cards are showing promise for enhancing accessibility. Instead of providing additional buttons or menu items to select appropriate input and output modes, basic user information can be stored on a smart card that triggers a custom configuration. For example, insertion of a particular card can cause a device to increase the font size on a display screen or activate speech output. Another might activate a feature to increase volume output, lengthen the response time between sequential operations, or allow two keys to be pressed sequentially instead of simultaneously. This technology, which depends on the issuance of a customized card to a particular individual, would allow redundancy and selectability without adding additional controls which would complicate the operation. As more and more functions are provided by software rather than hardware, this option may be more readily achievable.

5. The increasing use of ''plug-ins'' allow a product to be customized to the user's needs. Plug-ins function somewhat like peripheral devices to provide accessibility and there is no fundamental problem in using plug-ins to provide access, as long as the accessibility plug-ins are provided with the product. For example, at least one computer operating system comes packaged with accessibility enhancements which a user can install if wanted. In addition, modems are typically sold with bundled software that provides the customer premises equipment functionality. A compatible screen reader program, for example, could be bundled with it. At least one software company has developed a generalized set of accessibility tools designed to be bundled with a variety of software products to provide access. As yet, such developments are not fully mature; most products are still installed by providing on-screen visual prompts, not accompanied by meaningful sounds.

*Section 1193.41 Input, Controls, and Mechanical Functions*

Paragraph (a)

Operable Without Vision

1. Individuals who are blind or have low vision cannot locate or identify controls, latches, or input slits by sight or operate controls that require sight. Products should be manufactured to be usable independently by these individuals. For example, individuals who cannot see must use either touch or sound to locate and identify controls. If a product uses a flat, smooth touch screen or touch membrane, the user without vision will not be able to locate the controls without auditory or tactile cues.

2. Once the controls have been located, the user must be able to identify the various functions of the controls. Having located and identified the controls, individuals must be able to operate them.

3. Below are some examples of ways to make products accessible to persons with visual disabilities:

a. If buttons are used on a product, make them discrete buttons which can be felt and located by touch. If a flat membrane is used for a keyboard, provide a raised edge around the control areas or buttons to make it possible to locate the keys by touch. Once an individual locates the different controls, he or she needs to identify what the keys are. If there is a standard number pad arrangement, putting a nib on the ''5'' key may be all that is necessary for identifying the numbers. On a QWERTY keyboard, putting a tactile nib on the ''F'' and ''J'' keys allows touch typists to easily locate their hands on the key.

b. Provide distinct shapes for keys to indicate their function or make it easy to tell them apart. Provide Braille labels for keys and controls for those who read Braille to determine the function and use of controls.

c. Provide large raised letters for short labels on large objects. Where it is not possible to use raised large letters, a voice mode selection could be incorporated that announces keys when pressed, but does not activate them. This would allow people to turn on the voice mode long enough to explore and locate the item they are interested in, then release the voice mode and press the control. If it is an adjustable control, voice confirmation of the status may also be important.

d. Provide tactile indication on a plug which is not a self-orienting plug. Wireless connections, which eliminate the need to orient or insert connectors, also solve the problem.

e. Avoid buttons that are activated when touched to allow an individual to explore the controls to find the desired button. If touch-activated controls cannot be avoided (for example, on a touch screen), provide an alternate mode where a confirm button is used to confirm selections (for example, items are read when touched, and activated when the confirm button is pressed). All actions should be reversible, or require confirmation before executing non-reversible actions.

f. Once controls have been located and users know what the functions are, they must be operable. Some types of controls, including mouse devices, track balls, dials without markings or stops, and push-button controls with only one state, where the position or setting is indicated only by a visual cue, will not be usable by persons who are blind or have low vision. Providing a rotational or linear stop and tactile or audio detents is a useful strategy. Another is to provide keyboard or push-button access to the functions. If the product has an audio system and microprocessor, use audio feedback of the setting. For simple products, tactile markings may be sufficient.

g. Controls may also be shaped so that they can easily be read by touch (e.g., a twist knob

shaped like a pie wedge). For keys which do not have any physical travel, some type of audio or tactile feedback should be provided so that the individual knows when the key has been activated. A two-state key (on/off) should be physically different in each position (e.g., a toggle switch or a push-in/pop-out switch), so the person can tell what state the key is in by feeling it.

h. If an optional voice mode is provided for operating a product, a simple ''query'' mode can also be provided, which allows an individual to find out the function and state of a switch without actually activating it. In some cases, there may be design considerations which make the optimal mode for a sighted person inaccessible to someone without vision (e.g., use of a touch screen or mouse). In these cases, a primary strategy may be to provide a closely linked parallel method for efficiently achieving the same results (e.g., keyboard access) if there is a keyboard, or ''SpeedList'' access for touch screens.

Paragraph (b)

Operable With Low Vision and Limited or No Hearing

1. Individuals with low vision often also have hearing disabilities, especially older individuals. These persons cannot rely solely on audio access modes commonly used by people who are blind. Tactile strategies are still quite useful, although many older persons may not be familiar with Braille. The objective, therefore, is to maximize the number of people who can use their residual vision, combined with tactile senses, to operate a product.

2. Strategies for addressing this provision may include the following: a. Make the information on the product easier to see. Use high-contrast print symbols and visual indicators, minimize glare on the display and control surfaces, provide adequate lighting, position controls near the items they control to make them easy to find, and use Arabic instead of Roman numerals.

b. The type-face and type-spacing used can greatly affect legibility. The spacing between letters should be approximately 1/16 the height of uppercase letters and the spacing should be uniform from one label to the next. Also, symbols can sometimes be used which are much more legible and understandable than fine print.

c. Where the display is dynamic, provide a means for the user to enlarge the display and to ''freeze'' it. In addition to making it easier to see, there are strategies which can be used to reduce the need to see things clearly in order to operate them.

d. A judicious use of color-coding, always redundant with other cues, is extremely helpful to persons with low vision. These cues should follow standard conventions, and can be used to reduce the need to read labels (or read labels more than the first time). In addition, all of the tactile strategies discussed under section 1193.41 (a) can also be used here.

Paragraph (c)

Operable With Little or No Color Perception

1. Many people are unable to distinguish between certain color combinations. Others are unable to see color at all.

2. Strategies for addressing this provision include:

a. Eliminate the need for a person see color to operate the product. This does not eliminate the use of color completely but rather requires that any information essential to the operation of a product also be conveyed in some other fashion.

b. Avoid color pairs such as red/green and blue/yellow, that are indistinguishable by people with limited color perception.

c. Provide colors with different hues and intensity so that colored objects can be distinguished even on a black and white screen by their different appearance. Depending upon the product, the manufacturer may also be able to allow users to adjust colors to match their preferences and visual abilities.

d. Avoid colors with a low luminance.

Paragraph (d)

Operable Without Hearing

1. Individuals who are deaf or hard of hearing cannot locate or identify controls that require hearing. Products that provide only audio prompts cannot be used by individuals who are deaf or hard of hearing. For example, a voice-based interactive product that can be controlled only by listening to menu items and then pressing buttons is not accessible. By addressing the output issues under section 1193.43(d) many accessibility problems that affect input under this section can be solved.

2. Some strategies include:

a. Text versions of audio prompts could be provided which are synchronized with the audio so that the timing is the same.

b. If prompts are provided visually and no speech or vocalization is required, most problems associated with locating, identifying, and operating controls without hearing will be solved.

Paragraph (e)

Operable With Limited Manual Dexterity

1. Individuals may have difficulty manipulating controls on products for any number of reasons. Though these disabilities may vary widely, these persons have difficulty grasping, pinching, or twisting objects and often have difficulty with finer motor coordination. Some persons may use a headstick, mouthstick, or artificial limb.

2. Below are some strategies which will assist in designing products which will meet the needs of these persons:

a. Provide larger buttons and controls, or buttons which are more widely spaced, to reduce the likelihood that a user will accidentally activate an adjacent control.

b. Provide guard bars between the buttons or near the buttons so that accidental movements would hit the guard bars rather than accidentally bumping switches.

c. Provide an optional mode where buttons must be depressed for a longer period of time (e.g., SlowKeys) before they would accept input to help separate between inadvertent motions or bumps and desired activation.

d. Where two buttons must be depressed simultaneously, provide an option to allow them to be activated sequentially (e.g., StickiKeys).

e. Avoid buttons which are activated merely by touch, such as capacitance switches. Where that is difficult to do (e.g., with touchscreens), provide a ''confirm'' button which an individual can use to confirm that the item touched is the desired one. Also, make all actions reversible, or request confirmation before initiating non-reversible actions.

f. Avoid latches, controls, or key combinations which require simultaneous activation of two or more buttons, or latches. Also, avoid very small controls or controls which require rotation of the wrist or pinching and twisting. Where this is not possible, provide alternate means for achieving the same functions.

g. Controls which have non-slip surfaces and those that can be operated with the side of the hand, elbow or pencil can be used to minimize physical activity required. In some cases, rotary controls can be used if they can be operated without grasping and twisting (e.g., a thin pie slice shape control or an edge control). Providing a concave top on buttons makes them easier to use.

h. Make it easier to insert cards or connectors by providing a bevel around the slot or connector, or use cards or connectors which can be inserted in any orientation or which self-center or self-align. Placing the slot or connector on the front and near a ledge or open space allows individuals to brace their hands or arms to make use of the slot or connector easier.

i. For some designs, controls which pose problems for individuals with disabilities may be the most efficient, logical or effective mechanism for a majority of users. In these cases, provide alternate strategies for achieving the same functions, but which do not require fine manipulation. Speech input or voice recognition could be provided as an alternate input, although it should not be the only input technique.

Paragraph (f)

Operable With Limited Reach and Strength

1. Some individuals may have difficulty operating systems which require reach or strength. The most straight-forward solution to this problem is to place the controls where they can be easily reached with minimal changes to body position. Many products also have controls located on different parts of the product.

2. When this is the case, the following strategies may be used:

a. Allow the functions to be controlled from the keyboard, which is located directly in front of the user.

b. Allow voice recognition to be used as an option. This provides input flexibility, but should never be the only means for achieving a function.

c. Provide a remote control option that moves all of the controls for the product together on a unit that can be positioned optimally for the individual. This allows the individual to operate the product without having to move to it. If this strategy is used, a standard communication format would be

important to allow the use of alternate remote controls for those who cannot use the standard remote control.

d. Reduce the force needed to operate controls or latches and avoid the need for sustained pressure or activity (e.g., use guards rather than increased strength requirements to avoid accidental activation of crucial switches).

e. Provide arm or wrist rests or supports, create short cuts that reduce the number of actions needed, or completely eliminate the need to operate controls wherever possible by having automatic adjustments.

f. Section 4.34.3 of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) also contains specific information concerning reach ranges. ADAAG gives specific guidance concerning access to the built environment. Section 4.34.3 indicates the reach ranges for a front or parallel approach to equipment for individuals using a wheelchair. This information may prove useful for those telecommunications manufacturers whose equipment is stationary, such as an information kiosk.

Paragraph (g)

Operable Without Time-Dependent Controls

1. Many persons find it very difficult to operate time-dependent controls.

2. Some strategies which address this problem include:

a. Avoid any timed-out situations or provide instances where the user must respond to a question or moving display in a set amount of time or at a specific time (e.g., a rotating display).

b. Where timed responses are required or appropriate, allow the user to adjust them or set the amount of time allotted to complete a given task. Warn users that time is running out and allow them to secure extended time.

c. If the standard mode of operation would be awkward or inefficient, then provide an alternate mode of operation that offers the same functions.

Paragraph (h)

Operable Without Speech

1. Many individuals cannot speak or speak clearly. Products which require speech in order to operate them should also provide an alternate way to achieve the same function.

2. Some strategies to achieve this include:

a. Provide an alternate mechanism for achieving all of the functions which are controlled by speech. If a product includes speech identification or verification, provide an alternate mechanism for this function as well.

b. Include individuals who are deaf or who have speech disabilities in the subject populations that are used to develop voice recognition algorithms, so that the algorithms will better accommodate a wider range of speech patterns.

Paragraph (i)

Operable With Limited Cognitive Skills

1. Many individuals have reduced cognitive abilities, including reduced memory, sequence tracking, and reading skills. This does not necessarily prevent these persons from using a telecommunications product or feature.

2. The following strategies are extensions of techniques for making products easier for everyone to learn and use:

a. Use standard colors and shapes and group similar functions together. On products which have some controls that are used by everyone and other controls which would only be used by advanced users, it is generally good practice to separate the two, putting the more advanced features behind a door or under a separate menu item.

b. Products which read the contents of the display aloud, or controls which announce their settings, are easier for individuals who have difficulty reading.

c. Design products that are self-adjusting to eliminate additional controls which must be learned, and reduce the visual clutter.

d. On products which have sign-in procedures, allow user settings to be associated with them when they sign in or insert their identification card. The system can then autoconfigure to them. Some new ''smart cards'' are being designed with user preferences encoded on the card.

e. Where a complex series of steps is required, provide cuing to help lead the person through the process. It is also helpful to provide an ''undo'' or back up function, so that any mistakes can be easily corrected. Most people will find this function helpful.

f. Where functions are not reversible, request some type of confirmation from the user before proceeding. On labels and instructions, it is helpful to use short and simple phrases or sentences. Avoid abbreviations wherever possible. Eliminate the need to respond within a certain time or to read text within a certain time.

*Section 1193.43 Output, Displays, and Control Functions*

Paragraph (a)

Availability of Visual Information

1. Just as persons with visual or cognitive disabilities need to be able to operate the input, controls, and mechanical functions of a product, they must also have access to the output functions.

2. The following are strategies for addressing this provision:

a. Provide speech output of all displayed text and labels. For information which is presented in non-text form (e.g., a picture or graphic), provide a verbal description unless the graphic is just decorative. When speech output is provided, allow for the spoken message to be repeated if the message is very long. Also, if the information being provided is personal in nature, it is recommended that headphones be provided in order to assure privacy. A message for stepping through menus is also helpful.

b. Providing Braille labels for controls is an extremely effective mechanism for those individuals who read Braille.

c. Large raised print can also be used but is generally restricted to rather large objects due to the size of the letters.

Paragraph (b)

Availability of Visual Information for Low Vision Users

1. Individuals with low vision often also have hearing disabilities, especially older individuals. These persons cannot rely solely on audio access modes commonly used by people who are blind. Tactile strategies are still quite useful. Many people who have low vision can use their vision to access visually presented information on a product.

2. Strategies for meeting this provision involve:

a. Provide larger, higher contrast text and graphics. Individuals with 20/200 vision can see lettering if they get close to it, unless it is very small or has very poor contrast. Although 14 or 18 point type is recommended for visual displays, it is usually not possible to put this size text on small products.

b. Make the lettering as large and high contrast as possible to maximize the number of people who can use the product.

c. On displays where the font size can be varied, allow the user to increase the font size, even if it means that the user must pan or move in order to see the full display.

Paragraph (c)

Access to Moving Text

1. Moving text can be an access problem because individuals with low vision, or other disabilities may find it difficult or impossible to track moving text with their eyes.

2. Strategies to address this requirement may include the following:

a. Provide a mechanism for freezing the text. Thus, persons could read the stationary text and obtain the same information.

b. Provide scrolling to display one full line at a time, with a pause before the next line replaces it.

c. Provide the same information in another type of display which does not move. The right-to-left scrolling text on a TTY does not usually present a problem because it can be controlled by asking the sender to type slower or pause at specified intervals.

Paragraph (d)

Availability of Auditory Information

1. Individuals who have hearing disabilities are unable to receive auditory output, or mechanical and other sounds that are emitted by a product. These sounds are often important for the safe or effective operation of the product. Therefore, information which is presented auditorial should be available to all users.

2. Some strategies to achieve this include the following:

a. Provide a visual or tactile signal that will attract the person's attention and alert the user to a call, page, or other message, or to warn the user of significant mechanical difficulties in the product.

b. In portable products, a tactile signal such as vibration is often more effective than a visual signal because a visual signal may be missed. An auxiliary vibrating signaler might be effective if it is not readily achievable or effective to build vibration into a portable product.

c. For stationary products, a prominent visual indicator in the field of vision (e.g., a screen flash for a computer, or a flashing light for a telephone) is effective. To inform the user of the status of a process (e.g., line status on a telephone call, power on, saving to disk, or disconnected), text messages may

be used. It is also desirable to have an image or light that is activated whenever acoustic energy is present on a telephone line.

d. Speech messages should be portrayed simultaneously in text form and displayed where easily seen by the user. Such captions should usually be verbatim and displayed long enough to be easily read. If the product provides speech messages and the user must respond to those messages (e.g., interactive voice response and voice mail), a TTY accessible method of accessing the product could be provided.

e. TTY to TTY long distance and message unit calls from pay telephones are often not possible because an operator says how much money must be deposited. Technology exists to have this information displayed on the telephone and a test installation is currently operating at the Butler plaza on the Pennsylvania Turnpike. In addition, if the product provides interactive communication using speech and video, it would be helpful to provide a method and channel for allowing non-speech communication (e.g., text conversation) in parallel with the video.

f. Certain operations of products make sounds that give status information, although these sounds are not programmed signals. Examples include the whir of an operating disk drive and the click of a key being pushed. Where sounds of this type provide information important for operating the product, such as a ''beep'' when a key is activated, provide a light or other visual confirmation of activation.

Paragraph (e)

Availability of Auditory Information for People Who Are Hard of Hearing

1. People who are hard of hearing but not deaf can often use their hearing to access auditory information on a product.

2. Strategies for addressing this requirement may include the following:

a. Improve the signal to noise ratio by making the volume adjustable, between 18–25 dB, increasing the maximum undistorted volume, and minimizing background noise by such methods as better coupling between the signal source and the user.

b. Alerting tones are most likely to be heard if they involve multiple tones, separated in frequency, which contrast with the environment.

c. Occasionally, varying tones may be preferred for attracting attention. If speech is used, it is best to test its intelligibility with individuals who are hard of hearing to maximize its clarity and ease of understanding. Provide the ability for the user to have any messages repeated or to repeat the message if no response is received from the user.

d. For essential auditory information, the information might be repeated and an acknowledgment from the user requested.

e. The intelligibility of the output can also be maximized by the location of the speakers and by keeping the speakers away from noise sources. However, visual displays are often more desirable than loud prompts or alerts, because the latter reduce privacy and can annoy others unless the amplified signal is isolated by means of a headphone, induction coupling, direct plug-in to a hearing aid, or other methods.

f. The use of a telephone handset or earcup which can be held up to the ear can improve intelligibility without disturbing others in the area. If a handset or earcup is used, making it compatible with a hearing aid allows users to directly couple the auditory signal to their hearing aids. If the microphone in the handset is not being used, turning it off will also reduce the amount of background noise which the person hears in the earpiece. Providing a headphone jack also allows individuals to plug in headphones, induction loops, or amplifiers which they may use to hear better.

Paragraph (f)

Prevention of Visually-Induced Seizures

1. Individuals with photo-sensitive epilepsy can have a seizure triggered by displays which flicker or flash, particularly if the flash has a high intensity and within certain frequency ranges.

2. Strategies to address this requirement involve reducing or eliminating screen flicker or image flashing to the extent possible. In particular, the rates of 2 Hz or lower or 70 Hz or higher are recommended. This recommendation reflects current research data on people with photosensitive epilepsy which indicates that the peak sensitivity for these individuals is 20 Hz and that the sensitivity then drops off in both directions.

3. The chance of triggering seizures can also be reduced by avoiding very bright flashes which occupy a large part of the visual field (particularly in the center of the visual field) in order to minimize the impact on the visual cortex.

Paragraph (g)

Availability of Audio Cutoff

1. Individuals using the audio access mode, as well as those using a product with the volume turned up, need a way to limit the range of audio broadcast.

2. If an audio headphone jack is provided, a cut-off switch can be included in the jack so that insertion of the jack would cut off the speaker. If a telephone-like handset is used, the external speakers can be turned off when the handset is removed from the cradle.

Paragraph (h)

Non-Interference With Hearing Technologies

1. Individuals who are hard of hearing use hearing aids and other assistive listening devices but these devices cannot be used if a telecommunications product introduces noise into the listening aids because of stray electromagnetic interference.

2. Strategies for reducing this interference (as well as improving hearing aid immunity) are being researched. The most desirable strategy is to avoid the root causes of interference when a product is initially designed. If the root sources of interference cannot be removed, then shielding, placement of components to avoid hearing aid interference, and field-canceling techniques may be effective. Standards are being developed to limit interference to acceptable levels, but complete elimination for some technologies may not yet be practical.

3. In April 1996, the American National Standards Institute (ANSI) established a task group (ANSI C63) under its subcommittee on medical devices to develop standards to measure hearing aid compatibility and accessibility to digital wireless telecommunications. The C63.19 task group is continuing to develop its standard, C63.19–199X, American National Standard for Methods of Measurement for Hearing Aid Compatibility with Wireless Communications Devices. When the standard is completed, the Board intends to reference it in this appendix.

Paragraph (i)

Hearing Aid Coupling

1. Many individuals who are hard of hearing use hearing aids with a T-coil (or telecoil) feature to allow them to listen to audio output of products without picking up background noise and to avoid problems with feedback, signal attenuation or degradation.

2. The Hearing Aid Compatibility (HAC) Act defines a telephone as hearing aid compatible if it provides internal means for effective use with hearing aids and meets established technical standards for hearing aid compatibility.

3. The technical standards for HAC telephones are specified in ANSI/EIA–504–1989, ''Magnetic Field Intensity Criteria for Telephone Compatibility with Hearing Aids,'' ANSI/TIA/EIA–504–1–1994, ''An Addendum to EIA–504,'' which adds the HAC requirements, and the FCC regulations at 47 CFR 68.317 (a).

4. A good strategy for addressing this requirement for any product held up to the ear would be to meet these same technical requirements. If not readily achievable to provide built-in telecoil compatibility, other means of providing the electro-magnetic signal is the next strategy to be considered.

**Subpart D '' Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment**

*Section 1193.51 Compatibility*

Paragraph (a)

External Electronic Access to All Information and Control Mechanisms

1. Some individuals with severe or multiple disabilities are unable to use the built-in displays and control mechanisms on a product.

2. The two most common forms of manipulation-free connections are an infrared connection or a radio frequency connection point. Currently, the Infrared Data Association (IrDA) infrared connection point is the most universally used approach.

3. The Infrared Data Association together with dominant market players in the cellular and paging industries, Ericsson, Matsushita/Panasonic, Motorola, NEC, Nokia, NTT DoCoMo, Puma, and TU–KA Phone Kansai, announced on April 25, 1997 a proposed set of standards that will empower wireless communication devices, such as cellular phones, pagers and personal computers to transfer useful information over short distances using IrDA infrared data communication ports. Because the proposed standard is designed to be scalable, it is easy-to-adopt by a wide range of wireless devices

from pagers to more enhanced communications tools such as smart phones. (See http://www.irda.org).

4. Adding an infrared connector to the serial port of a peripheral device or specialized customer premises equipment will make these products more compatible with each other and with customer premises equipment.

5. An infrared link can provide a mechanism for providing access to smaller, more advanced telecommunication devices and provide a safety net for products which are unable to incorporate other technologies. There is a joint international effort to develop a Universal Remote Console Communication (URCC) protocol which would achieve this functionality. (See http://trace.wisc.edu/world/urc/).

Paragraph (b)

Connection Point for External Audio Processing Devices

1. Individuals using audio peripheral devices such as amplifiers, telecoil adapters, or direct-connection into a hearing aid need a standard, noise free way to tap into the audio generated by a product.

2. Individuals who cannot hear well can often use products if they can isolate and enhance the audio output. For example, they could plug in a headphone which makes the audio louder and helps shut out background noise; they might feed the signal through an amplifier to make it louder, or through filters or frequency shifters to make it better fit their audio profile. If they are wearing a hearing aid, they may directly connect their hearing aid to the audio signal or plug in a small audio loop which allows them to couple the audio signal through their hearing aid's built-in T-coil.

3. Devices which can process the information and provide visual and/or tactile output are also possible. The most common strategy for achieving this requirement is the use of a standard 9 mm miniature plug-in jack, common to virtually every personal tape player or radio. For small products, a subminiature phone jack could be used.

Paragraph (c)

Compatibility of Controls With Prosthetics

1. Individuals who have artificial hands or use headsticks or mouthsticks to operate products have difficulty with capacitive or heat-operated controls which require contact with a person's body rather than a tool. Individuals who wear prosthetics are unable to operate some types of products because they either require motions that cannot easily be made with a prosthetic hand, or because products are designed which require touch of the human skin to operate them (e.g., capacitive touchscreen kiosks), making it impossible for individuals with artificial arms or hands to operate, except perhaps with their nose or chin. Some individuals who do not have the use of their arms use either a headstick or a mouthstick to operate products. Controls and mechanisms which require a grasping and twisting motion should be avoided.

Paragraph (d)

TTY Connectability

1. Acoustic coupling is subject to interference from ambient noise, as many handsets do not provide an adequate seal with TTYs. Therefore, alternate (non-acoustic) connections are needed. Control of the microphone is needed for situations such as pay-phone usage, where ambient noise picked up by the mouthpiece often garbles the signal. For the use of voice carry-over, where the person can speak but not hear, the user needs to be able to turn the microphone on to speak and off to allow them to receive the TTY text replies.

2. A TTY can be connected to and used with any telecommunications product supporting speech communication without requiring purchase of a special adapter, and the user is able to intermix speech and clear TTY communication. The most common approach today is to provide an RJ–11 jack. On very small products, where there may not be room for this large jack, a miniature or subminiature phone-jack wired as a ''headset'' jack (with both speaker and microphone connections) could be used as an alternate approach. In either case, a mechanism for turning the phone mouthpiece (microphone) on and off would reduce garbling in noisy environments, while allowing the user to speak into the microphone when desired (to conduct conversations with mixed voice and TTY). For equipment that combines voice communications, displays, keyboards and data communication functions, it is desirable to build in direct TTY capability.

Paragraph (e)

TTY Signal Compatibility

1. Some telecommunications systems compress the audio signal in such a manner that standard signals used by a TTY is distorted or attenuated preventing successful TTY communication over the system. A TTY can be used with any product providing voice communication function.

2. The de facto standard of domestic TTYs is Baudot which has been defined in ITU–T Recommendation V.18. Although the V.18 standard has been adopted, products are not yet available which meet its requirements.

3. This provision can be addressed by ensuring that the tones used can travel through the phones compression circuits undistorted. It is even more desirable to provide undistorted connectivity to the telephone line in the frequency range of 390 Hz to 2300 Hz (ITU–T Recommendation V.18), as this range covers all of the TTY protocols known throughout the world. Although it may not be achievable with current technology, an alternate strategy might be to recognize the tones, transmit them as codes, and resynthesize them at the other end. In addition, it should be possible for individuals using TTYs to conduct conversations with mixed voice and TTY, and to control all aspects of the product and receive any messages generated by the product.

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# Part III

# Department of the Treasury

## Fiscal Service

**31 CFR Part 203**

**Payment of Federal Taxes and the Treasury Tax and Loan Program; Final Rule**

**DEPARTMENT OF THE TREASURY**

**Fiscal Service**

**31 CFR Part 203**

**RIN–1510–AA37**

## Payment of Federal Taxes and the Treasury Tax and Loan Program

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Financial Management Service is issuing this final rule to implement provisions of the North American Free Trade Agreement Implementation Act (NAFTA), as amended. NAFTA requires the development and implementation of an electronic funds transfer (EFT) system for the collection of certain depository taxes. This regulation implements the Electronic Federal Tax Payment System (EFTPS) by prescribing rules for financial institutions and Federal Reserve Banks that use EFT mechanisms to process Federal tax payments through the EFTPS. The EFTPS began operation in the fall of 1996.

This regulation also updates the rules governing the changes to the Treasury's investment program that were necessitated by the implementation of this EFT system.

**EFFECTIVE DATE:** March 5, 1998.

**ADDRESSES:** Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, LCB 420, 401 14th Street, S.W., Washington, D.C. 20227.

**FOR FURTHER INFORMATION CONTACT:** Michael G. Dressler, Senior Financial Program Specialist; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, 401 14th Street, S.W., Washington, D.C. 20227, at (202) 874–6590; or Randall S. Lewis, Principal Attorney, at (202) 874–6680. A copy of this final rule is available for downloading on the Financial Management Service home page at the following address: http://www.fms.treas.gov/regs.html.

**SUPPLEMENTARY INFORMATION:**

### Background

This regulation is authorized by the North American Free Trade Agreement Implementation Act (NAFTA), Public Law 103–182, Section 523, 107 Stat. 2057, 2161 (1993), the substantive provisions of which are codified at 26 U.S.C. 6302(h). NAFTA mandates that the Secretary of the Treasury (Secretary) phase-in the collection of a minimum percentage of certain types of depository taxes by electronic funds transfer (EFT) and develop and implement an EFT system for the collection of such taxes. The Secretary has delegated responsibility to the Internal Revenue Service (IRS) for the former and to the Financial Management Service (FMS) for the latter. With the enactment of NAFTA, the FMS achieved its longstanding goal to collect depositary taxes electronically. This regulation implements the FMS' Electronic Federal Tax Payment System (EFTPS), which began operation on October 28, 1996.

On September 30, 1996, the FMS published in the **Federal Register** a notice of proposed rulemaking (NPRM) that would govern the deposit of Federal taxes using EFT mechanisms (61 FR 51186). The NPRM also proposed rules updating Treasury's investment program to reflect the impact of the new electronic system. The original closing date for the submission of comments was November 21, 1996. However, the FMS published a notice in the **Federal Register** extending that date to January 13, 1997 (61 FR 59211).

### Comments on the Proposed Rule

The title of this part has been changed in two steps for two reasons. The first change from ''Treasury Tax and Loan Depositaries'' to the NPRM designation as ''Treasury Tax and Loan Depositaries and the Payment of Federal Taxes'' reflects the importance of the addition of the EFTPS. Secondly, the title used in this Final Rule reverses the order in the NPRM title to shift the emphasis from the Treasury Tax and Loan (TT&L) depositaries to the payment of Federal taxes through the EFTPS because under this Final Rule at § 203.9, ''a financial institution does not need to be designated as a TT&L depositary in order to process electronic Federal tax payments.''

Two sections of the NPRM, §§ 203.4 and 203.5, have been combined in this Final Rule as § 203.4 causing all sections of the Final Rule after § 203.4 to be renumbered. For clarity, each section citation in this Final Rule is identified as either an NPRM or Final Rule citation. For example, the NPRM § 203.11 was the section covering Enrollment. All references to the NPRM section on Enrollment will identify it as NPRM § 203.11 (emphasis added). In the Final Rule, the section covering Enrollment is § 203.10. Therefore, all references to the Enrollment section of the Final Rule will identify it as § 203.10 in the *Final Rule* (emphasis added).

By the close of the January 13, 1997, comment period, the FMS received comments on the NPRM from twelve organizations: six financial institutions and six industry trade associations. The following includes a discussion of the significant and most heavily commented upon issues:

*Conformance With Industry Automated Clearing House (ACH) Rules*

Commenters expressed concern with certain NPRM provisions that would require financial institutions to adhere to a set of rules different from private industry ACH rules. Eleven of the twelve commenters advocated the adoption of the National Automated Clearing House Association (NACHA) Operating Rules for ACH processing, enrollment, compensation, and/or credit reversals for electronic Federal tax payments.

Currently, the FMS is proposing a revision of 31 CFR Part 210 which considers adoption of NACHA rules wherever practicable. The revision as proposed would address the role of NACHA rules in all Federal payments and collections made through the ACH system. However, as the examples that follow illustrate, Part 203 requires certain exceptions to the wholesale adoption of industry rules due to EFTPS program considerations. Therefore, ACH entries governed by Part 203 are not subject to any provisions of Part 210 that are inconsistent with Part 203.

The FMS understands the commenters' interest in having a uniform set of rules governing both commercial and Federal transactions and has recognized these concerns by revising this Final Rule to conform with commercial operating rules to the extent practicable. For example, the FMS has revised the Final Rule to conform to commercial operating rules for both ACH credit reversals and the waiting period between the origination of a prenotification entry and the first payment.

However, Treasury, as an executive agency within the Federal Government, is constrained from the wholesale adoption of commercial operating rules. For example, the Internal Revenue Code provisions governing the disclosure of returns and return information preclude Treasury from adopting the commercial operating rules for electronic enrollments. In addition, the FMS is constrained from adopting commercial operating rules that would require Treasury to pay interest for payments erroneously made by financial institutions. Specifically, such interest is not recoverable from the United States unless expressly provided by statute. The FMS has not identified any statute that would authorize Treasury to pay such interest.

*Enrollment and Enrollment Liabilities*

Section 203.11(a) of the NPRM provided that the taxpayer may enroll in EFTPS using either a paper-based or electronic enrollment method. Section 203.11(b)(2) of the NPRM allowed a financial institution to assist its customers by offering electronic enrollment. However, even if the financial institution offered electronic enrollment, a representative of the financial institution would have to verify and sign an enrollment form, and provide a paper copy of the completed form to the taxpayer for the taxpayer's signature and submission to the Treasury Financial Agent (TFA).

Five commenters were concerned that no details were provided on how an electronic enrollment process would work and recommended that the FMS adopt procedures developed by NACHA to transmit enrollment data through the ACH using the standard entry class code, ''ENR.'' One commenter suggested enrolling taxpayers through the EFTPS home page on the Internet. Additionally, five commenters questioned the need for a paper copy of the enrollment form to be submitted to the TFA when an electronic enrollment option is used. One commenter further recommended that the FMS send back an acknowledgment file including an acknowledgment number that could take the place of the taxpayer's written signature.

Section 203.10 of the Final Rule deletes all references to electronic enrollments since such electronic processes would not eliminate the IRS' need for a paper copy of an enrollment form signed by the taxpayer. Currently, the IRS requires the taxpayer's written signature for all enrollments in EFTPS. The written taxpayer signature provides the IRS with the requisite authority to disclose to the TFAs and to the taxpayer's financial institution the confidential taxpayer return information necessary to effect enrollment and payment transactions, provides the TFAs with the authority to initiate debits to the taxpayer's account, and provides the IRS with authority to resolve issues related to enrollments and payments. Until an all electronic enrollment process becomes feasible for IRS tax payments, taxpayers will continue to enroll in the EFTPS by means of paper enrollment forms.

Notwithstanding the deletion of the hybrid electronic/paper enrollment process from this Final Rule, the FMS understands that the IRS is undertaking efforts towards accepting electronic signatures. Treasury also will continue to work with entities such as NACHA to determine the feasibility of using the ENR enrollment standard entry class code for EFTPS enrollments, and may look at other options for an all electronic enrollment process in the future.

NPRM § 203.11(c) provided that if a taxpayer enrolled for the ACH debit method, ''* * * an authorized representative of the financial institution shall verify the accuracy of the financial institution routing number, taxpayer account number, and taxpayer account type * * * [and] shall sign the enrollment form attesting to the accuracy of the financial institution information.''

Five commenters suggested that it is unnecessary and inappropriate for Treasury to require a financial institution to sign the enrollment form to verify bank routing and account numbers. The commenters stated that there is no way to verify that the signature is an authorized signature of a bank representative and that the banking information would be verified in the prenotification process. Another commenter supported the requirement for financial institutions to sign the enrollment form since it provides taxpayers with an opportunity to talk to their financial institutions and to ask questions.

The FMS agrees with both sets of comments, and has balanced both interests in the Final Rule. Specifically, § 203.10(c) of the Final Rule deletes the requirement that a financial institution sign the enrollment form, but requires the financial institution to verify certain information upon the specific request of the taxpayer. A financial institution may perform such verification by telephone.

One commenter requested additional information on the status of an enrollment if the form is not signed by a representative of the taxpayer's financial institution, and asked what, if any, liability is assumed by the financial institution if the form is unsigned or signed with inaccurate information. Because the Final Rule deletes the requirement that an authorized financial institution representative sign the enrollment form, such enrollment forms will be processed without a financial institution signature, and the financial institutions will not accrue any liabilities if authorized representatives do not sign such forms. However, the FMS may hold such financial institutions liable under § 203.14(a) of the Final Rule if taxpayers request verification of banking data, and the financial institutions fail to identify incorrect banking data that result in a late tax payment.

One commenter recommended that Treasury modify the enrollment form to require a taxpayer to obtain the signature of a financial institution representative as evidence of permission to use ACH credit origination services to make EFTPS payments. The FMS recognizes the importance of a taxpayer discussing the provision of ACH credit services with its financial institution before the taxpayer sends the enrollment form. Accordingly, the FMS has revised the enrollment form to instruct taxpayers electing the ACH credit option to verify in advance whether the financial institution is capable of providing ACH credit origination services.

One commenter inquired whether a taxpayer could enroll via a prenotification entry. The prenotification entry cannot be used to enroll a taxpayer because it does not provide all the required information. Taxpayers must enroll as prescribed in § 203.10 of the Final Rule.

*Prenotification*

NPRM § 203.13(b)(1) required financial institutions that receive an ACH debit entry to ''timely verify the information contained in the ACH prenotification entry.'' Three commenters sought clarification on what information the financial institution is required to verify in the prenotification or zero dollar entry it receives. One financial institution commenter asked whether financial institutions must verify the taxpayer identification number (TIN). Section 203.12(b)(1) of the Final Rule clarifies that financial institutions need to verify the account number and account type, and not the TIN. Moreover, because the TFAs will not originate zero dollar entries, financial institutions will need to verify only information in prenotification entries.

NPRM § 203.13(c)(1) provided that the financial institution ''shall originate an ACH credit prenotification entry that may be in the form of a zero dollar entry'' and that credit entries may not be initiated less than 10 calendar days after the date the prenotification was transmitted. Some commenters expressed a preference for prenotification entries and some expressed a preference for zero dollar entries. Two commenters opposed the mandatory use of prenotification entries, and one favored it. Several commenters pointed out that the NACHA rules make prenotification entries optional. They noted that it would require computer system modifications to identify Federal tax payments in several situations: where a

file could contain Federal tax payments among many other types of payments, and where the credits are triggered by customers themselves. Nine commenters were critical of the 10 calendar day waiting period between origination of a prenotification or zero dollar entry and the first payment. Several pointed out that the NACHA rules were changed in March, 1997, to require a six business day waiting period between prenotification entries and the first payment.

The FMS recognizes the merits of these comments and has revised the Final Rule. Specifically, § 203.12(c)(1) of the Final Rule clarifies that the FMS will accept either an ACH prenotification entry containing the TIN in the entry detail record (no addenda) or the zero dollar entry with the TIN in the addenda record. The TFA will use the information to verify with the IRS that the TIN is valid and corresponds with an enrolled taxpayer. The FMS has limited the requirement that financial institutions originate prenotification entries for ACH credits. Under the Final Rule, a prenotification or zero dollar entry is not required unless specifically requested by the taxpayer. Financial institutions should note, however, that guidance sent from the TFAs following enrollment suggests that taxpayers instruct their financial institutions to originate zero dollar transactions or prenotification entries prior to the first payment. Consequently, financial institutions will have to be able to originate such entries. The FMS also has deleted the 10 calendar day waiting period between the origination of a prenotification entry and the first payment in light of the NACHA rules.

*Prenotification Liabilities*

The FMS received a number of inquiries regarding what liability, if any, is assumed by financial institutions in the prenotification process. In the context of ACH debits, the TFA will initiate a prenotification, not a zero dollar entry, for each taxpayer enrolling for ACH debit. Sections 203.12(b)(1) and (2) of the Final Rule require the financial institution receiving an EFTPS prenotification to ''timely verify the account number and account type contained in the ACH prenotification entry [and] timely and properly return a prenotification entry that contains an invalid account number or account type, or is otherwise erroneous or unprocessable.'' In addition, § 203.14(a) in the Final Rule clarifies NPRM § 203.15(a) by providing that the FMS may assess interest where a financial institution failed to respond to an ACH prenotification entry as required in §§ 203.12(b) and 203.12(c) of the Final Rule, where such failure resulted in a late tax payment. In the context of ACH credits, the FMS may hold a financial institution liable under § 203.14(a) of the Final Rule if a late tax payment results from the financial institution's failure to initiate a taxpayer-requested prenotification or zero dollar entry.

The FMS believes that the potential imposition of such liabilities on financial institutions during the prenotification process is fair, equitable, and a logical outgrowth of the NPRM. Specifically, the preamble to the NPRM notified readers that the liability provisions generally were geared towards placing liability for errors on the party making the errors. The FMS believes that this principle serves two important purposes here. First, it is an incentive for financial institutions to process EFTPS payments in accordance with this Part, which will help ensure that depository taxes are credited to the TGA on tax due date. Second, it makes the United States whole for the lost value of funds resulting from late tax payments. For example, a financial institution receiving an ACH debit prenotification entry may have little or no incentive to review and return timely a prenotification entry containing an invalid account number if it can do so without any financial exposure.

*Acknowledgments*

NPRM § 203.13(c)(4) required financial institutions originating ACH credit tax payments to provide a transaction trace number to their customers upon request. One commenter stated that the process for assigning and providing a trace number is unclear and the numbers provided by financial institution proprietary systems may not be sufficient.

The intent of this provision was to ensure that taxpayers have the means to trace their tax payments at the IRS if there is some discrepancy or problem. For example, in originating ACH credit entries, financial institutions transmit to the IRS transaction trace numbers, that are included in the IRS master file. If there is a question between the IRS and the taxpayer as to the timeliness of a tax payment, the taxpayer may obtain the transaction trace number from its financial institution, and provide it to the IRS, which will then trace the payment. The FMS seeks to protect the interests of taxpayers by ensuring that they have a means of tracing their tax payments while at the same time affording financial institutions maximum flexibility in providing taxpayers with the means to do so. Accordingly, § 203.12(c)(4) of the Final Rule requires financial institutions to provide their customers, upon request, either transaction trace numbers or some other method to trace the tax payment.

Four commenters recommended that Treasury implement a system to provide electronic acknowledgments for ACH credit tax payments and three commenters recommended that Treasury utilize the new ACH acknowledgments (''ACK'' and ''ATX'') developed by NACHA. The FMS currently is considering the operational implications of developing and utilizing the new NACHA acknowledgments.

Two of the commenters expressed concern over a perceived system bias between the ACH debit and the ACH credit acknowledgment process. The FMS believes that there is no system bias, and that taxpayers can easily obtain ACH acknowledgment numbers for both ACH debit and credit transactions. Specifically, EFTPS provides a taxpayer initiating an ACH debit through the telephone or personal computer with an automated response acknowledgment number at the end of the reporting session. Taxpayers initiating an ACH credit transaction may obtain an ACH credit acknowledgment number by placing a toll-free call to the EFTPS Customer Service Centers on the tax due date.

*ACH credit deadlines*

NPRM § 203.13(c)(3) and the preamble to the NPRM left open the possibility of a deadline different from that currently required for ACH credit entries. In the preamble to the NPRM, the FMS suggested that if a different ACH credit deadline were required, that deadline would be approximately 11:00 p.m. on the day before the entry was to settle. All of the commenters suggested that establishing an ACH credit deadline for EFTPS payments that is different from the standard deadline already in place for such entries would impose significant operational problems for financial institutions and/or confuse taxpayers/customers. The commenters were concerned that financial institutions would be unaware that ACH files originated by its customers would contain such tax payment credit entries subject to an earlier deadline. Several commenters suggested that the establishment of a separate deadline for EFTPS ACH credit payments may serve as a disincentive for financial institutions to offer such services to their taxpaying customers.

Section 203.12(c)(3) of the Final Rule remains substantively unchanged. The FMS needs the flexibility to change ACH credit deadlines for purposes of maximizing the timely investment of tax

receipts. However, the FMS emphasizes that it has no current plans to impose a deadline different from the existing standard ACH processing schedules. Moreover, the FMS would ensure that financial institutions are provided with sufficient advance notice of any deadline changes so that they may undertake any necessary steps to continue to process timely ACH credit entries on behalf of their customers. While the FMS recognizes the possibility that any deadline change may cause some financial institutions to cease offering such services to their customers, the FMS believes that the marketplace would fill any void.

*ACH Credit Reversals*

NPRM § 203.13(d) required advance IRS approval for all corrections of ACH credit entries. In general, the commenters opposed obtaining approval from the IRS for reversals of ACH credit entries, remarking that obtaining approval from IRS is cumbersome; the requests must be done manually and quickly; and that IRS could not respond quickly enough to prevent financial institutions from losing the value of funds. Several commenters suggested that the reversals be governed by NACHA rules, which at that time did not require ACH credit originators to notify receivers when initiating an ACH credit reversal.

The FMS recognizes the merits of these comments, and has revised the Final Rule. Specifically, § 203.12(d) of the Final Rule eliminates the need to obtain advance approval from the IRS before originating an ACH credit reversal. A December 1997 NACHA rule change requires an ACH originator to notify a receiver when making a reversing entry to the receiver's account. For the reasons stated above, the Final Rule does not require that IRS be notified when an ACH credit reversal is initiated. However, financial institutions are reminded of ACH record retention rules, and need to be able to provide documentation per the requirements of the procedural instructions.

*Same-day payments*

NPRM § 203.14(a) proposed a 2:00 P.M. FRB head office local zone time (LZT) deadline for all three same-day tax payment methods (Fedwire value, Fedwire non-value, and Direct Access). One commenter requested that the Fedwire deadline for Federal tax payments be the same as the normal Fedwire national deadline currently established for third party transactions (6:00 p.m. ET).

The FMS believes that a uniform same-day payment cutoff time is necessary to maximize and meet the needs of Treasury's investment program. Under this program, Treasury invests tax payments with the taxpayers' financial institutions in open-ended interest-bearing obligations or ''note balances.'' In order for these financial institutions to receive these investments, Treasury must designate and employ them separately as Treasury Tax and Loan (TT&L) note depositaries. The 2:00 p.m. LZT cutoff time is necessary to ensure that EFTPS tax payments transmitted by these financial institutions via Fedwire non-value and Direct Access are credited to their TT&L note balances on the same day, thereby maximizing Treasury's investment opportunities. Specifically, Fedwire non-value and Direct Access transactions are settled through the Federal Reserve's TT&L system. The 2:00 p.m. LZT cutoff is necessary to provide time for the TT&L system to process these two non-value transactions, and create the investment entries to credit the note depositaries' balances.

The FMS has decided to apply this same cutoff time to the Fedwire value payment method because it is in the interest of the Treasury's investment program that Fedwire value not be favored over the Fedwire non-value and Direct Access options. Specifically, tax payments remitted via the Fedwire value method are credited to Treasury's General Account at the FRB and cannot be invested with note option depositaries that day, thereby delaying Treasury's investment opportunities. If the cutoff time for the Fedwire value payment method was later than for the two non-value payment methods, informal conversations with financial institutions and the TFAs indicate that Fedwire value likely would be favored over the Fedwire non-value and Direct Access payment methods which would have detrimental effects on the Treasury's investment program.

Consequently, the FMS has decided to retain the 2:00 p.m. LZT cutoff time for all three same day payment methods. However, §§ 203.13(a), (e)(1)(i), and (e)(3) of the Final Rule delete specific references to this cutoff time, and instead refer to the procedural instructions that will contain the 2:00 p.m. LZT cutoff time.

Furthermore, the FMS currently is contemplating the adoption of a uniform national cutoff time of 5:00 p.m. Eastern Time (ET) for all same-day payments with a potential implementation date of mid-1999. The possibility of a uniform cutoff time stems from the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103–328, 108 Stat. 2338 (1994). Under this law, a financial institution will have a single Federal Reserve account where its master account is located. The location of this master account will determine the cutoff time for all same-day Federal tax payments. If the FMS maintains the 2:00 p.m. LZT cutoff time, financial institutions with a master account located on the West Coast would enjoy a competitive advantage in attracting customers over financial institutions with a master account on the East Coast due to the additional three hours for making a same-day Federal tax payment. In order to prevent unfair business advantages among financial institutions, the FMS is considering an FRB recommendation to implement a uniform national cutoff time of 5:00 p.m. ET for all same-day payments. If the FMS decides to adopt such a uniform national cutoff time, the FMS will ensure that financial institutions will be provided adequate advance notice to make any necessary system changes.

In the preamble to the NPRM, the FMS requested comments on restricting the use of the Fedwire non-value and Direct Access same-day payment methods to TT&L note depositaries. One commenter supported FMS' underlying intent and five commenters opposed such restrictions. The FMS has decided against imposing any restrictions, and all three same-day mechanisms are available for use by any financial institution capable of originating these transactions.

Two commenters expressed concern over limiting the use of same-day payment mechanisms to certain categories of taxpayers. This Final Rule does not prescribe which payment methods taxpayers must use.

NPRM §§ 203.14(b), (c), and (d) provided that upon the request of the taxpayer, the taxpayer's financial institution shall provide the taxpayer with reference numbers for same-day transactions (the Input Message Accountability Data (IMAD) number and the Electronic Tax Application (ETA) reference number). For example, for Fedwire transactions, the ETA reference number is assigned once the payment has been received by the Federal Reserve's ETA. This number is provided to the TFAs and the IRS at the end of each business day and is available to originating financial institutions from their local FRB upon request only. Taxpayers wishing to receive the IMAD or ETA reference numbers on a day subsequent to the transaction date also may obtain such reference numbers by contacting the EFTPS Customer Service Centers. One

commenter suggested that the IMAD and ETA reference numbers for same-day payments should be provided to the taxpayer automatically.

The FMS does not accept this comment, and as a result, §§ 203.13(b), (c), and (d) of the Final Rule remain substantively unchanged. The FMS has weighed the needs of the taxpayers in receiving such reference numbers against the burdens that would be imposed upon financial institutions if the Final Rule were to require financial institutions to provide taxpayers with such numbers automatically. This Final Rule balances the needs of both parties by requiring financial institutions to provide their customers with such reference numbers upon the specific request of their customers. The FMS believes that to mandate that financial institutions provide their customers with these reference numbers in instances where the customer may not seek such numbers would be unduly burdensome on financial institutions given certain operational constraints. Taxpayers seeking such reference numbers on a continuous basis should tailor their contracts with their financial institutions to meet their needs.

NPRM § 203.14(e) defined the circumstances in which the FRB or the IRS could reverse or cancel a same-day payment. Two commenters recommended that taxpayers be contacted before the FRB or the IRS cancel or reject a same-day payment.

The FMS does not accept these comments. Therefore, section 203.13(e) of the Final Rule remains substantively unchanged. Due to the time critical nature of the same-day payment mechanism, it is neither feasible nor practicable to notify the taxpayer before a same-day payment is reversed or canceled. Specifically, all same-day payments are edited by the FRB's ETA, which will automatically reverse same-day tax payments that are late, *e.g.*, that are received after the ETA deadline, or that are timely but do not contain enough information to identify the taxpayer. The FRB also reverses same-day payments at the direction of the IRS, which may direct a reversal in situations where a payment cannot be posted in the IRS database because the TIN is invalid, or where a taxpayer or financial institution have requested the funds be returned because of an overpayment. The FRB also may reverse or cancel tax payments at the request of the originating financial institution if the request is received prior to the ETA cutoff time on the transaction date.

In all cases, the FMS believes that it is the responsibility of financial institutions to notify their customers if same-day payments are returned or canceled. This is especially important where timely same-day payments are returned or canceled so that customers may attempt to correct the payment prior to the cutoff time.

*Interest Assessments for Lost Value of Funds*

NPRM § 203.12(c) provided that Treasury will not pay interest on any payments erroneously paid to Treasury and subsequently refunded to the financial institution. Several commenters asked that Treasury compensate financial institutions for the time value of funds held.

The FMS rejects these comments, and, as a result, section 203.11(c) of the Final Rule remains substantively unchanged. It is a well settled principle that interest is not payable by the United States unless expressly provided by statute or in a contract authorized by law. This principle extends equally to situations where notions of equity would seem to militate in favor of the United States paying interest. Congress has expressly authorized the payment of interest for tax refunds when the IRS pays without being sued and when a taxpayer receives a judgment from a court for any overpayment of internal revenue taxes. See 26 U.S.C. 6402 and 28 U.S.C. 2411 respectively.

Because the FMS has not identified any statutory provision that authorizes it to pay interest to financial institutions that make erroneous payments that subsequently are refunded by Treasury, the FMS is unable to compensate financial institutions for their lost value of funds.

NPRM § 203.15 set forth the circumstances and procedures for the assessment, calculation, and collection of interest from financial institutions for purposes of making the United States whole for the lost value of funds resulting from late tax payments. One commenter suggested that only taxpayers be held liable for late tax payments. Other commenters opposed the interest assessment provisions. One commenter recommended that financial institutions only be penalized if they transmit a certain number of late tax payments each year.

The FMS does not accept these comments, and § 203.14 of the Final Rule remains substantively unchanged on these points. The legislative scheme underlying EFTPS is to ensure that certain depository taxes are credited to the TGA on the tax due date. If an EFTPS tax payment is not credited to the TGA on the tax due date, the IRS will impose a penalty on the taxpayer pursuant to 26 U.S.C. 6656. However, IRS Revenue Ruling 94–46 (July 6, 1994) provides that the IRS will abate this penalty if the taxpayer establishes that the instructions the taxpayer provided to its financial institution were timely and correct, and that it had sufficient funds to make the tax payment. For example, the FMS understands that if the taxpayer did everything right in initiating an ACH credit payment, but the taxpayer's financial institution failed to originate the payment timely, which resulted in a late tax payment, the IRS will abate the penalty imposed upon the taxpayer. However, under these circumstances, the United States will have lost the value of funds from the date the taxpayer specified that its payment should settle to the TGA to the time the late tax payment actually settled to the TGA.

As a result, the FMS believes that to implement successfully the legislative scheme underlying EFTPS, it may be necessary in these circumstances to hold a financial institution liable for the lost value of funds. Specifically, if a financial institution is not held liable for its mistakes which result in a late tax payment, a financial institution may have less incentive to process timely such tax payments for credit to the TGA on the tax due date. The interest assessment in most instances simply recovers the imputed value of funds erroneously retained by the financial institution. The FMS further believes that financial institutions can minimize this risk by imposing conditions on their customers, and by initiating prenotification or zero dollar entries.

Nevertheless, the FMS will not assess interest on financial institutions for errors resulting in late tax payments where such errors occur before the effective date of this Final Rule.

Furthermore, § 203.14(b) of the Final Rule limits a financial institution's interest liability to seven calendar days for ACH debit transactions and 45 calendar days for both ACH credit and same-day payment transactions. The FMS has established this cap in recognition of the fact that taxpayers have a responsibility, upon learning of their financial institution's error, to initiate a new payment transaction. The seven calendar day cap for ACH debit transactions stems from the fact that if the taxpayer's financial institution returns the taxpayer's ACH debit transaction, the TFA will take immediate steps to mail the taxpayer a notification letter. The FMS believes that upon receipt of this letter from the TFA, the taxpayer has a responsibility to initiate a new tax payment transaction. The FMS also believes that this process generally should take no longer than

seven calendar days from the date the tax payment would have settled to the TGA. The 45 day cap for ACH credit and same-day payment transactions stems from the fact that if the TFA returns an ACH credit transaction or if the FRB returns a same-day payment transaction to the financial institution, the taxpayer, at the latest, will learn of the return upon receipt of its monthly statement of account from its financial institution. The 45 days is based upon an estimated 30 day statement cycle, and 15 days processing and mail time.

One commenter asked whether Treasury will assess interest on financial institutions when the late tax payment is due to the ACH operator, a system problem, a daylight overdraft, or other causes. Whether the FMS will assess interest on a financial institution to make the United States whole for the lost value of funds depends on the specific facts and circumstances. Financial institutions will have the right to contest any interest assessment under § 203.16 of the Final Rule.

Several commenters asked for more specific information on the interest assessment process. The specific procedures will be published in the procedural instructions in the Treasury Financial Manual (TFM).

NPRM § 203.15(c) provided that a financial institution that processes tax payments under this part is deemed to authorize the FRB, acting as Treasury's fiscal agent, to debit its reserve account for interest assessments. One commenter suggested that Treasury should not initiate a debit to a financial institution's reserve account. Another commenter suggested that Treasury give financial institutions an opportunity to appeal the interest prior to paying it.

The FMS does not accept these comments, and § 203.14(c) of the Final Rule remains substantively unchanged. The FMS believes that the operational steps underlying the collection of interest assessments will take several months from the date of the late tax payment due to the extensive IRS research required. Because the FMS will not assess ''interest on interest,'' the FMS believes that affording a financial institution an opportunity to contest the assessment prior to collecting it only would exacerbate the lost value of funds to the United States, especially in light of the cap on a financial institution's liability at § 203.14(b) of the Final Rule. Moreover, § 203.14(c) of the Final Rule, which authorizes the FMS to debit the interest assessment from a financial institution's reserve account, is consistent with the current process by which FMS recovers the lost value of funds from financial institutions in the paper Federal Tax Deposit (FTD) system. The FRB will send an electronic message to the financial institution the day prior to the day that the financial institution's reserve account is debited for the interest assessment.

NPRM § 203.15(d) and § 203.14(d) of the Final Rule provide that Treasury will not assess interest on a financial institution when the taxpayer has not satisfied the conditions imposed by its financial institution. Several commenters asked what information a financial institution would need to provide to establish that the taxpayer failed to meet the financial institution's conditions. The FMS has no pre-set requirements; however, the FMS will consider such information as the written conditions themselves; a saved electronic file; and/or a tape of telephonic instructions showing the time and the direction to initiate a transaction. The FMS will not regulate the agreements between the financial institution and its customers, and therefore, will not give guidance on the conditions a financial institution may impose.

One commenter asked if a financial institution must disclose to the taxpayer its proof that the taxpayer failed to satisfy its requirements for making an EFTPS payment. This part does not regulate the exchange of information between a taxpayer and its financial institution.

*Unauthorized Debits*

NPRM § 203.16 prohibited financial institutions from initiating debits to the TGA unless they had prior written permission. NPRM § 203.16 also provided that financial institutions that do initiate such unauthorized debit entries are liable for the amount of the debit and an interest charge at the Federal funds rate plus two percent, and are deemed to authorize the Federal Reserve Bank to debit their reserve accounts for the amount of the debit plus interest.

One commenter pointed out that a customer theoretically could initiate a debit to the TGA by using a customer delivery system, and that a financial institution would suffer an undue burden if it had to ensure that its customers could not initiate such debits. The FMS does not accept this comment, and § 203.15 of the Final Rule is substantively unchanged on this point. The FMS believes that financial institutions are responsible for how they allow their customers to key in transaction information. This approach is consistent with commercial operating rules, which generally provide that originating depository financial institutions warrant that their entries are authorized by both the originator and the receiver.

However, should such a situation occur, the TFA will attempt to return the unauthorized debit entry in time for same-day settlement. If this return is made on the same day, there will be no need to recover the principal nor will there be any interest charge. If the return is not accomplished in the same day, the financial institution shall be liable to the Treasury for the amount of the transaction and interest charges calculated according to the procedural instructions published in the TFM.

One commenter stated that reversals should be excluded expressly from this section. The FMS agrees and has clarified § 203.15(a) of the Final Rule.

One commenter recommended that the interest charge assessed for an unauthorized ACH debit be lowered to the Federal funds rate. The FMS does not accept this comment and § 203.15(d) of the Final Rule remains substantively unchanged. This higher rate is intended to deter unauthorized debits from the TGA.

*Appeal and Dispute Resolution*

NPRM § 203.17 afforded financial institutions the opportunity to appeal an interest assessment under NPRM § 203.15 or an interest charge under NPRM § 203.16. Several commenters requested an explanation as to how this process would work. The FMS will provide greater detail on these processes in its procedural instructions in the TFM. Nevertheless, § 203.16 of the Final Rule expands the administrative remedies afforded financial institutions. Specifically, if a financial institution is unsuccessful in contesting an interest assessment, it may appeal the administrative denial to a higher level Treasury official. This two-step administrative review process is similar to the one currently used for the paper FTD system.

*Compensation*

NPRM § 203.19(a)(8) prohibited financial institutions serving as TT&L depositaries from accepting compensation from taxpayers for handling the deposit of tax payments in the paper FTD system. Three commenters suggested that the FMS remove this prohibition. The FMS does not accept this comment and § 203.18 of the Final Rule is substantively unchanged. While the FMS believes that such comments may have merit, the NPRM did not give affected parties adequate notice of this possibility. As a result, the FMS is constrained from accepting these comments. However,

the FMS intends to issue an NPRM on removing this prohibition.

Two commenters noted that the NPRM was silent on whether financial institutions could charge taxpayers for processing tax payments under EFTPS. These commenters recommended that the FMS expressly authorize financial institutions to charge their customers for processing their EFTPS tax payments. The FMS does not accept these comments, and the Final Rule remains silent on whether financial institutions, acting as the taxpayers' agents, can charge their customers for processing EFTPS payments.

The decision not to regulate the fees financial institutions can charge under EFTPS stems from the fact that the EFTPS eliminates one of the benefits currently provided financial institutions under the paper-based FTD system. Specifically, when a taxpayer makes its tax payment under the FTD system, the tax payment is deposited into a non-interest-bearing TT&L account at the financial institution. The financial institution retains the imputed value of these funds until the next day when the funds either are credited to the TGA or are invested with the financial institution in interest-bearing notes. Under EFTPS, these tax payments will no longer be deposited overnight into such non-interest bearing accounts, and the financial institutions will no longer retain the value of these funds. The FMS believes that it is best left to the marketplace to decide what fees, if any, financial institutions will charge their customers. However, the FMS believes that any fees for ACH credit or debit entries will be insignificant.

*Collateral*

NPRM § 203.25(f)(1) was modeled on existing § 203.14(f)(1) and provided that in the event of a TT&L depositary's insolvency or closure, Treasury may apply the collateral pledged to satisfy any claim of the United States. The NPRM preamble explained Treasury's longstanding interpretation that ''any claim of the United States'' includes, but is not limited to, claims arising out of the depositary relationship for which the collateral was originally pledged. One commenter suggested that the TT&L collateral only be used to satisfy TT&L claims. The FMS does not accept this comment, and the FMS' interpretation of § 203.24(f)(1) of the Final Rule remains unchanged. The FMS believes that this interpretation is necessary to protect the United States from loss.

NPRM § 203.25 set forth Treasury's collateral security requirement for financial institutions serving as TT&L depositaries. One commenter asked how a TT&L depositary would be notified of the amount in the Note Option/Direct Investment account so that it could deposit sufficient collateral to secure the deposits. This information appears in the daily Federal Reserve account activity statement, which the depositary can access after 9:00 a.m. ET via Fedline by using the Accounting Services application and choosing the IAS Account Inquiry option or by using the TT&L application and choosing the Host Account Activity Report. Section 203.24 of the Final Rule provides that note option depositaries that participate in the direct investment program are not required to collateralize continuously the pre-established maximum balance but must be prepared to pledge collateral on the day the direct investment is placed.

One commenter sought confirmation that same-day EFTPS payments initiated by a financial institution serving as a TT&L depositary that miss the cutoff time are not required to be collateralized. The preamble of the NPRM stated that ''financial institutions processing tax payments under the EFTPS . . . need not pledge collateral, unless they elect to participate in Treasury's investment program.'' EFTPS payments, including those that the depositary is unable to complete, are not required to be collateralized.

**Regulatory Analysis**

These regulations are not a significant regulatory action as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required. It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. This regulation will not impose significant costs on small entities. It is further expected that such costs associated with electronic tax payments will be offset by cost savings resulting from reductions in the paperwork burden and the availability of a user-friendly electronic tax collection system.

**List of Subjects in 31 CFR Part 203**

Banks, Banking, Electronic Funds Transfers, Taxes.

For the reasons set out in the preamble, 31 CFR part 203 is revised to read as follows:

## PART 203—PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

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203.23 Note balance.
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**Authority:** 12 U.S.C. 90, 265–266, 332, 391, 1452(d), 1464(k), 1767, 1789a, 2013, 2122, and 3102; 26 U.S.C. 6302; 31 U.S.C. 321, 323 and 3301–3304.

### Subpart A—General Information

#### § 203.1 Scope.

The regulations in this part govern the processing of Federal tax payments by financial institutions and the Federal Reserve Banks (FRB) using electronic payment or paper methods; the designation of Treasury Tax and Loan (TT&L) depositaries; and the operation of the Department of the Treasury's (Treasury) investment program.

#### § 203.2 Definitions.

As used in this part:

(a) *Advice of credit* means the Treasury form used in the Federal Tax

Deposit system that is supplied to depositaries to summarize and report Federal tax deposits. The current form is Treasury Form 2284. Advice of credit information also may be delivered electronically.

(b) *Automated Clearing House (ACH) credit entry* means a transaction originated by a financial institution in accordance with applicable ACH formats and applicable laws, regulations, and procedural instructions.

(c) *Automated Clearing House (ACH) debit entry* means a transaction originated by a Treasury Financial Agent (TFA), in accordance with applicable ACH formats and applicable laws, regulations, and instructions.

(d) *Business day* means any day on which the FRB of the district is open.

(e) *Direct Access transaction* means same-day Federal tax payment information transmitted by a financial institution directly to the Electronic Tax Application at an FRB using the Fedline Taxpayer Deposit Application.

(f) *Direct investment* means placement of Treasury funds with a depositary and a corresponding increase in a depositary's note balance.

(g) *Electronic Federal Tax Payment System (EFTPS)* means the system through which taxpayers remit Federal tax payments electronically.

(h) *Electronic Tax Application (ETA)* means a sub-system of EFTPS that receives, processes, and transmits same-day Federal tax payment information for taxpayers. ETA activity is comprised of Fedwire value transfers, Fedwire non-value transactions, and Direct Access transactions.

(i) *Electronic Tax Application (ETA) reference number* means the unique number assigned to each ETA transaction by an FRB.

(j) *Federal funds rate* means the Federal funds rate published weekly by the Board of Governors of the Federal Reserve System.

(k) *Federal Reserve account* means an account with reserve or clearing balances held by a financial institution at an FRB.

(l) *Federal Reserve Bank of the district* means the FRB that services the geographical area in which the financial institution is located, or such other FRB that may be designated in an FRB operating circular.

(m) *Federal Tax Deposit (FTD)* means a tax deposit or payment made using an FTD coupon.

(n) *Federal Tax Deposit coupon (FTD coupon)* means a paper form supplied to a taxpayer by the Treasury for use in the FTD system to accompany deposits of Federal taxes. The current paper form is Form 8109.

(o) *Federal Tax Deposit system (FTD system)* means the paper-based system through which taxpayers remit Federal tax payments by presenting an FTD coupon and payment to a depositary or an FRB. The depositary prepares an advice of credit summarizing all FTDs.

(p) *Federal taxes* means those Federal taxes or other payments specified by the Secretary of the Treasury as eligible for payment through the procedures prescribed in this part.

(q) *Fedwire* means the funds transfer system owned and operated by the FRBs.

(r) *Fedwire non-value transaction* means the same-day Federal tax payment information transmitted by a financial institution to an FRB using a Fedwire type 1090 message to authorize a payment.

(s) *Fedwire value transfer* means a Federal tax payment made by a financial institution using a Fedwire type 1000 message.

(t) *Financial institution* means any bank, savings bank, savings and loan association, credit union, or similar institution.

(u) *Fiscal Agent* means the Federal Reserve acting as agent for the Treasury.

(v) *Input Message Accountability Data (IMAD)* means a unique number assigned to each Fedwire transaction by the financial institution sending the transaction to an FRB.

(w) *Note option* means that program available to a TT&L depositary under which Treasury invests in obligations of the depositary. The amount of such investments will be evidenced by an open-ended interest-bearing note balance maintained at the FRB of the district.

(x) *Procedural instructions* means the procedures contained in the Treasury Financial Manual, Volume IV (IV TFM), other Treasury instructions issued through the TFAs, and FRB operating circulars issued consistent with this part.

(y) *Recognized insurance coverage* means the insurance provided by the Federal Deposit Insurance Corporation, the National Credit Union Administration, and by insurance organizations specifically qualified by the Secretary.

(z) *Remittance option* means that program available to a depositary that processes FTD payments, under which the amount of deposits credited by the depositary to the TT&L account will be withdrawn by the FRB for deposit to the Treasury General Account on the day that the FRB receives the advices of credit supporting such deposits.

(aa) *Same-day payment* means the following ETA payment options:

(1) Direct Access transaction;

(2) Fedwire non-value transaction; and

(3) Fedwire value transfer.

(bb) *Secretary* means the Secretary of the Treasury, or the Secretary's delegate.

(cc) *Special direct investment* means the placement of Treasury funds with a depositary and a corresponding increase in a depositary's note balance, where the investment specifically is identified as a ''special direct investment'' and may be secured by collateral retained in the possession of the depositary pursuant to the terms of § 203.24(c)(2)(i).

(dd) *Tax due date* means the day on which a tax payment is due to Treasury, as determined by statute and Internal Revenue Service (IRS) regulations.

(ee) *Transaction trace number* means an identifying number assigned by the taxpayer's financial institution to each ACH credit transaction.

(ff) *Treasury Financial Agent (TFA)* means a financial institution designated as an agent of Treasury for processing EFTPS enrollments, receiving EFTPS tax payment information, and originating ACH debit entries on behalf of Treasury as authorized by the taxpayer.

(gg) *Treasury General Account (TGA)* means an account maintained in the name of the United States Treasury at an FRB.

(hh) *Treasury Tax and Loan (TT&L) account* means the Treasury account maintained by a depositary in which funds are credited by the depositary after receiving and collateralizing FTDs.

(ii) *Treasury Tax and Loan depositary (depositary)* means a financial institution designated as a depositary by the FRB of the district for the purpose of maintaining a TT&L account and/or note balance.

(jj) *Treasury Tax and Loan (TT&L) Program* means the program for collecting Federal taxes and investing the Government's excess operating funds.

(kk) *Treasury Tax and Loan (TT&L) rate of interest* means the Federal funds rate less twenty-five basis points (i.e., ¼ of 1 percent).

### § 203.3 Financial institution eligibility for designation as a Treasury Tax and Loan depositary.

(a) To be designated as a TT&L depositary, a financial institution shall be insured as a national banking association, state bank, savings bank, savings and loan, building and loan, homestead association, Federal home loan bank, credit union, trust company,

or a U.S. branch of a foreign banking corporation, the establishment of which has been approved by the Comptroller of the Currency.

(b) A financial institution shall possess the authority to pledge collateral to secure TT&L account balances and/or a note balance.

(c) In order to be designated as a TT&L depositary for the purposes of processing tax deposits in the FTD system, a financial institution shall possess under its charter either general or specific authority permitting the maintenance of the TT&L account, the balance of which is payable on demand without previous notice of intended withdrawal. In addition, note option depositaries shall possess either general or specific authority permitting the maintenance of a note balance, which is payable on demand without previous notice of intended withdrawal.

**§ 203.4 Designation of financial institutions as Treasury Tax and Loan depositaries.**

(a) *Parties to the agreement.* To be designated as a TT&L depositary, a financial institution shall enter into a depositary agreement with Treasury's fiscal agent, the FRB. By entering into this agreement, the financial institution agrees to be bound by this part, and procedural instructions issued pursuant to this part.

(b)(1) *Application procedures.* An eligible financial institution seeking designation as a depositary and, thereby, the authority to maintain a TT&L account and/or a note balance shall file with the FRB, Financial Management Service Form 458, ''Financial Institution Agreement and Application for Designation as a TT&L Depositary,'' and Financial Management Service Form 459, ''Resolution Authorizing the Financial Institution Agreement and Application for Designation as a TT&L Depositary,'' certified by its board of directors. Financial Management Service Forms 458 and 459 are available upon request from the FRB of the district.

(2) Depositaries processing tax payments in the FTD system are required to elect either the remittance or the note option.

(c) *Designation.* Each financial institution satisfying the eligibility requirements and the application procedures will receive from the FRB notification of its specific designation as a TT&L depositary. A financial institution is not authorized to maintain a TT&L account or note balance until it has been designated as a TT&L depositary by the FRB.

**§ 203.5 Obligations of the depositary.**

A depositary shall:

(a) Administer a note balance, if not participating in the FTD System.

(b) Administer a TT&L account and, if applicable, a note balance, if participating in the FTD System.

(c) Comply with the requirements of Section 202 of Executive Order 11246, entitled ''Equal Employment Opportunity'' (3 CFR, 1964–1965 Comp. p. 339) as amended by Executive Orders 11375 and 12086 (3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1978 Comp. p. 230), and the regulations issued thereunder at 41 CFR Chapter 60.

(d) Comply with the requirements of Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations issued thereunder at 41 CFR part 60–741, requiring Federal contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(e) Comply with the requirements of Section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 4212, Executive Order 11701 (3 CFR 1971–1975 Comp. p. 752), and the regulations issued thereunder at 41 CFR parts 60–250 and 61–250, requiring Federal contractors to take affirmative action to employ and advance in employment qualified special disabled veterans and Vietnam-era veterans.

**§ 203.6 Compensation for services.**

Except as provided in the procedural instructions, Treasury will not compensate financial institutions for servicing and maintaining the TT&L account, or for processing tax payments through the EFTPS or the FTD system.

**§ 203.7 Termination of agreement or change of election or option.**

(a) *Termination by Treasury.* The Secretary may terminate the agreement of a depositary at any time upon notice to that effect to that depositary, effective on the date set forth in the notice.

(b) *Termination or change of election or option by the depositary.* A depositary may terminate its depositary agreement, or change its option or election, consistent with this part and the procedural instructions, by submitting notice to that effect in writing to the FRB effective at a prospective date set forth in the notice.

**§ 203.8 Application of part and procedural instructions.**

The terms of this part and procedural instructions issued pursuant to this part shall be binding on financial institutions that process tax payments and/or maintain a note balance under this part. By accepting or originating Federal tax payments, the financial institution agrees to be bound by this part and by procedural instructions issued pursuant to this part.

## Subpart B—Electronic Federal Tax Payments

**§ 203.9 Scope of the subpart.**

This subpart prescribes the rules by which financial institutions shall process Federal tax payment transactions electronically. A financial institution does not need to be designated as a TT&L depositary in order to process electronic Federal tax payments. In addition, a financial institution that does process electronic Federal tax payments under this subpart does not thereby become a Federal Government depositary and shall not advertise itself as one because of that fact.

**§ 203.10 Enrollment.**

(a) *General.* Taxpayers shall complete an enrollment process with the TFA prior to making their first electronic Federal tax payment.

(b) *Enrollment forms.* The TFA shall provide financial institutions and taxpayers with enrollment forms upon request. The taxpayer is responsible for completing the enrollment form, obtaining the verifications required on the form, and returning the enrollment form to the TFA.

(c) *Verification.* If the taxpayer elects the ACH debit entry method of paying taxes, an authorized representative of the financial institution shall verify the accuracy of the financial institution routing number, taxpayer account number, and taxpayer account type at the request of the taxpayer.

**§ 203.11 Electronic payment methods.**

(a) *General.* Electronic payment methods for Federal tax payments available under this subpart include ACH debit entries, ACH credit entries, and same-day payments. Any financial institution that is capable of originating and/or receiving transactions for these payment methods, by itself or through a correspondent financial institution, may do so on behalf of a taxpayer.

(b) *Conditions to making an electronic payment.* Nothing contained in this part shall affect the authority of financial institutions to enter into contracts with their customers regarding the terms and conditions for processing payments, provided that such terms and conditions are not inconsistent with this subpart and applicable law governing the particular transaction type.

(c) *Payment of interest for time value of funds held.* Treasury will not pay

interest on any payments erroneously paid to Treasury and subsequently refunded to the financial institution.

**§ 203.12 Future-day reporting and payment mechanisms.**

(a) *General.* A financial institution may receive an ACH debit entry, originated by the TFA at the direction of the taxpayer; or, a financial institution may originate an ACH credit entry, at the direction of the taxpayer. Taxpayers will be credited for the actual amount received by Treasury.

(b) *ACH debit.* A financial institution receiving an ACH debit entry originated by the TFA shall, as applicable:

(1) Timely verify the account number and account type contained in an ACH prenotification entry;

(2) Timely and properly return a prenotification entry that contains an invalid account number or account type, or otherwise is erroneous or unprocessable;

(3) Timely and accurately notify the TFA of incorrect information on entries received, using a Notification of Change entry; and

(4) Timely and accurately return an entry not posted, including but not limited to, a return or a contested dishonored return for acceptable return reasons, as set forth in the procedural instructions.

(c) *ACH credit.* A financial institution originating an ACH credit entry at the direction of a taxpayer shall:

(1) At the request of the taxpayer, originate either an ACH prenotification containing the taxpayer's identification number or a zero dollar ACH entry with the appropriate addenda record. Additional format information is contained in the procedural instructions;

(2) Format the ACH credit entry in the ACH format approved by Treasury for Federal tax payments;

(3) Originate an ACH credit entry by the appropriate deadline, as specified by the FRB or Treasury, whichever is earlier, in order to meet the tax due date specified by the taxpayer; and

(4) Provide the taxpayer, upon request, a transaction trace number, or some other method to trace the tax payment.

(d) *ACH credit reversals.* Reversals may be initiated for a duplicate or erroneous file or entry. No advance approval from, or notification to, the IRS is required when originating an ACH credit reversal. Documentation of reversals shall be made available as set forth in the procedural instructions.

**§ 203.13 Same-day reporting and payment mechanisms.**

(a) *General.* A financial institution or its authorized correspondent may initiate same-day reporting and payment transactions on behalf of taxpayers. A same-day payment must be received by the FRB of the district by the deadline established by the Treasury in the procedural instructions. Taxpayers will be credited for the actual amount received by Treasury.

(b) *Fedwire value transfer.* To initiate a Fedwire value tax payment, the financial institution shall be a Fedwire participant and shall comply with the FRB's Fedwire format for tax payments. The taxpayer's financial institution shall provide the taxpayer, upon request, the IMAD and the ETA reference numbers for a Fedwire value transfer. The financial institution may obtain the ETA reference number for Fedwire value transfers from its FRB by supplying the related IMAD number. Fedwire value transfers settle immediately to the TGA and thus are not credited to a depositary's note balance.

(c) *Fedwire non-value transaction.* By initiating a Fedwire non-value transaction, a financial institution authorizes the FRB of the district to debit its Federal Reserve account or, for a TT&L depositary, to debit the Federal Reserve account of the depositary or its designated correspondent financial institution, for the amount of the tax payment specified in the transaction. To initiate a Fedwire non-value transaction, the financial institution shall be a Fedwire participant and shall comply with the FRB's Fedwire format for tax payments. The taxpayer's financial institution shall provide the taxpayer, upon request, the IMAD and ETA reference numbers for the Fedwire non-value transaction. The financial institution may obtain the ETA reference number for Fedwire non-value transactions from its FRB by supplying the related IMAD number.

(1) For a note option depositary using a Fedwire non-value transaction, the tax payment amount will be credited to the depositary's note balance on the day of the transaction.

(2) For a remittance option depositary using a Fedwire non-value transaction, the tax payment amount will be debited from the Federal Reserve account of the depositary or the depositary's designated correspondent and credited to the TGA on the day of the transaction.

(3) For a non-TT&L depositary financial institution using a Fedwire non-value transaction, the tax payment amount will be debited from the financial institution's Federal Reserve account and credited to the TGA on the day of the transaction.

(d) *Direct Access Transaction.* By initiating a Direct Access transaction, a financial institution authorizes the FRB of the district to debit its Federal Reserve account or, for a TT&L depositary, to debit the Federal Reserve account of the depositary or its designated correspondent financial institution for the amount of the tax payment specified in the transaction. The taxpayer's financial institution shall provide the taxpayer, upon request, the ETA reference number for the Direct Access transaction.

(1) For a note option depositary using a Direct Access transaction, the tax payment amount will be credited to the depositary's note balance on the day of the transaction.

(2) For a remittance option depositary or a non-TT&L depositary financial institution using a Direct Access transaction, the tax payment amount will be debited from the Federal Reserve account of the financial institution or its designated correspondent financial institution, and credited to the TGA on the day of the transaction.

(e) *Cancellations and reversals.* In addition to cancellations due to insufficient funds in the financial institution's Federal Reserve account, the FRB may reverse a same-day transaction:

(1) If the transaction:

(i) Is originated by a financial institution after the deadline established by the Treasury in the procedural instructions;

(ii) Has an unenrolled taxpayer identification number; or

(iii) Does not meet the edit and format requirements set forth in the procedural instructions; or,

(2) At the direction of the IRS, for the following reasons:

(i) Incorrect taxpayer name;

(ii) Overpayment; or

(iii) Unidentified payment; or,

(3) At the request of the financial institution that sent the same-day transaction, if the request is made prior to the deadline established by Treasury in the procedural instructions on the day the payment was made.

(f) Other than as stated in paragraph (e) of this section, Treasury is not obligated to reverse all or any part of a payment.

**§ 203.14 Electronic Federal Tax Payment System interest assessments.**

(a) *Circumstances subject to interest assessments.* Treasury may assess interest on a financial institution in instances where a taxpayer that failed to meet a tax due date proves to the IRS

that the delivery of tax payment instructions to the financial institution was timely and that the taxpayer satisfied the conditions imposed by the financial institution pursuant to § 203.11(b). Treasury also may assess interest where a financial institution failed to respond to an ACH prenotification entry on an ACH debit as required in § 203.12(b) or failed to originate an ACH prenotification or zero dollar entry on an ACH credit as described in § 203.12(c) which then resulted in a late payment.

(b) *Calculation of interest assessment.* Any interest assessed under this section will be at the TT&L rate. The interest will be assessed from the day the taxpayer specified that its payment should settle to the Treasury until the receipt of the payment by Treasury, subject to the following limitations: For ACH debit transactions, interest will be limited to no more than seven calendar days; for ACH credit and same-day transactions, interest will be limited to no more than 45 calendar days. The limitation of liability in this paragraph does not apply to any interest assessment in which there is an indication of fraud, the presentation of a false claim, or misrepresentation or embezzlement on the part of the financial institution or any employee or agent of the financial institution.

(c) *Authorization to assess interest.* A financial institution that processes Federal tax payments made by electronic payment methods under this subpart is deemed to authorize the FRB to debit its Federal Reserve account or the account of its designated correspondent financial institution for any interest assessed under this section. Upon the direction of Treasury, the FRB shall debit the Federal Reserve account of the financial institution or the account of its designated correspondent financial institution for the amount of the assessed interest.

(d)(1) *Circumstances not subject to the assessment of interest.* (1) Treasury will not assess interest on a taxpayer's financial institution if a taxpayer fails to meet a tax due date because the taxpayer has not satisfied conditions imposed by the financial institution pursuant to § 203.11(b) and the financial institution has not contributed to the delay. The burden is on the financial institution to establish, pursuant to the procedures in § 203.16, that the taxpayer has not satisfied the conditions and that the financial institution has not contributed to the delay.

(2) Treasury will not assess interest on a financial institution if the delay causing the interest assessment is due to the FRB or the TFA and the financial institution did not contribute to the delay. The burden is on the financial institution to establish, pursuant to the procedures in § 203.16, that it did not cause or contribute to the delay.

#### § 203.15 Prohibited debits through the Automated Clearing House.

(a) *General.* The Treasury has instituted operational safeguards to scrutinize all entries that remove funds from the TGA. In the event funds are removed from the TGA without authority, this section sets forth the liability of financial institutions originating such entries. Accordingly, a financial institution shall not originate an ACH transaction to debit the TGA without the prior written permission of Treasury. Unauthorized entries under this section do not include reversal entries of previously initiated ACH credits authorized in § 203.12(d).

(b) *Liability.* A financial institution that originates an unauthorized ACH entry that debits the TGA shall be liable to Treasury for the amount of the transaction and shall be liable for interest charges as specified in paragraph (d) of this section.

(c) *Authorization to recover principal and assess interest charge.* By initiating unauthorized debits to the TGA through the ACH, a financial institution is deemed to authorize the FRB to debit its Federal Reserve account or the account of its designated correspondent financial institution for any principal and, if applicable, an interest charge assessed by Treasury under this section.

(d) *Interest charge calculation.* The interest charge shall be at a rate equal to the Federal funds rate plus two percent. The interest charge shall be assessed for each calendar day from the day the TGA was debited to the day the TGA is recredited with the full amount of principal due.

#### § 203.16 Appeal and dispute resolution.

(a) *Contest.* A financial institution may contest any interest assessed under § 203.14, any principal or interest assessed under § 203.15, or any late fees assessed under § 203.20. The financial institution shall submit information supporting its position and the relief sought. The information must be received, in writing, by the Treasury officer or fiscal agent identified in the procedural instructions, no later than 90 calendar days after the date the FRB debits the reserve account of the financial institution under §§ 203.14, 203.15, or 203.20. The Treasury officer or fiscal agent will: uphold the assessment, or reverse the assessment, or modify the assessment, or mandate other action.

(b) *Appeal.* The financial institution may appeal the decision to Treasury as set forth in the procedural instructions. No further administrative review of the Treasury's decision is available under this Part.

(c) *Recoveries.* In the event of an over or under recovery of either interest, principal, or late fees, Treasury will instruct the FRB to credit or debit the Federal Reserve account of the financial institution or its designated correspondent financial institution, as appropriate.

### Subpart C—Federal Tax Deposits

#### § 203.17 Scope of the subpart.

This subpart applies to all depositaries that accept FTD coupons and governs the acceptance and processing of those coupons.

#### § 203.18 Tax deposits using Federal Tax Deposit coupons.

(a) *FTD coupons.* A depositary that accepts FTD coupons, through any of its offices that accept demand and/or savings deposits, shall:

(1) Accept from a taxpayer, cash, a postal money order drawn to the order of the depositary, or a check or draft drawn on and to the order of the depositary, covering an amount to be deposited as Federal taxes when accompanied by an FTD coupon on which the amount of the deposit has been properly entered in the space provided. A depositary may accept, at its discretion, a check drawn on another financial institution, but it does so at its option and absorbs for its own account any float and other costs involved.

(2) Issue a counter receipt when requested to do so by a taxpayer that makes an FTD deposit over the counter.

(3) Place a stamp impression on the face of each FTD coupon in the space provided. The stamp shall reflect the date on which the tax deposit was received and the name and location of the depositary. The timeliness of the tax payment will be determined by reference to the date stamped by the depositary on the FTD coupon.

(4) Credit, on the date of receipt, all FTD deposits to the TT&L account and administer that account pursuant to the provisions of this part.

(5) Forward, each day, to the IRS Center servicing the geographical area in which the depositary is located, the FTD coupons for all FTD deposits received that day. The FTD coupons shall be accompanied by an advice of credit reflecting the total amount of all FTD coupons.

(6) Establish an adequate record of all FTD deposits prior to transmittal to the

IRS Center so that the depositary will be able to identify deposits in the event tax deposit coupons are lost in shipment. For tracking purposes, a record shall be made of each FTD deposit showing, at a minimum, the date of deposit, the taxpayer identification number, and the amount of the deposit. The depositary's copy of the advice of credit may be used to provide the necessary information if individual deposits are listed separately, showing date, taxpayer identification number, and amount.

(7) Deliver its advices of credit to the FRB by the cutoff hour designated by the FRB for receipt of advices.

(8) Not accept compensation from taxpayers for accepting FTDs and handling them as required by this section.

(b) *FTD deposits with Federal Reserve Banks.* An FRB shall:

(1) Accept an FTD directly from a taxpayer when such tax deposit is:

(i) Mailed or delivered by a taxpayer; and

(ii) Provided in the form of cash or a check or postal money order payable to the order of that FRB; and,

(iii) Accompanied by an FTD coupon on which the amount of the tax deposit has been properly entered in the space provided.

(2) Issue a counter receipt, when requested to do so by a taxpayer that makes an FTD over the counter; and,

(3) Place, in the space provided on the face of each FTD coupon accepted directly from a taxpayer, a stamp impression reflecting the name of the FRB and the date on which the tax deposit will be credited to the TGA. Timeliness of the Federal tax payment will be determined by this date. However, if a deposit is mailed to an FRB, it shall be subject to the ''Timely mailing treated as timely filing and paying'' clause of the Internal Revenue Code, 26 U.S.C. 7502; and,

(4) Credit the TGA with the amount of the tax payment;

(i) On the date the payment is received, if payment is made in cash; or,

(ii) On the date the proceeds of the tax payment are collected, if payment is made by postal money order or check.

### § 203.19 Note option.

(a) *Late delivery of advices of credit.* If an advice of credit does not arrive at the FRB before the designated cutoff hour for receipt of such advices, the FRB will post the funds to the note balance as of the next business day after the date on the advice of credit. This is the date on which funds will begin to earn interest for Treasury.

(b) *Transfer of funds from TT&L account to the note balance.* For a depositary selecting the note option, funds equivalent to the amount of deposits credited by a depositary to the TT&L account shall be withdrawn by the depositary and credited to the note balance on the business day following the receipt of the tax payment.

### § 203.20 Remittance option.

(a) *FTD late fee.* If an advice of credit does not arrive at the FRB before the designated cutoff hour for receipt of such advices, an FTD late fee in the form of interest at the TT&L rate will be assessed for each day's delay in receipt of such advice. Upon the direction of Treasury, the FRB shall debit the Federal Reserve account of the financial institution or the account of its designated correspondent financial institution for the amount of the late fee.

(b) *Withdrawals.* For a depositary selecting the Remittance Option, the amount of deposits credited by a depositary to the TT&L account will be withdrawn upon receipt by the FRB of the advices of credit. The FRB will charge the depositary's Federal Reserve account or the account of the depositary's designated correspondent financial institution.

## Subpart D—Investment Program and Collateral Security Requirements for Treasury Tax and Loan Depositaries

### § 203.21 Scope of the subpart.

This subpart provides rules for TT&L depositaries on crediting note balances under the various payment methods; debiting note balances; and pledging collateral security.

### § 203.22 Sources of balances.

Depositaries electing to participate in the investment program can receive Treasury's investments in obligations of the depositary from the following sources:

(a) FTDs that have been credited to the TT&L account pursuant to subpart C of this part;

(b) EFTPS ACH credit and debit transactions, Fedwire non-value transactions, and Direct Access transactions pursuant to subpart B of this part; and

(c) Direct investments and special direct investments pursuant to subpart D of this part.

### § 203.23 Note balance.

(a) *Additions.* Treasury will invest funds in obligations of depositaries selecting the note option. Such obligations shall be in the form of open-ended, interest-bearing notes; and additions and reductions will be reflected on the books of the FRB of the district.

(1) *FTD system.* A depositary processing tax deposits using the FTD system and electing the note option shall debit the TT&L account and credit its note balance as stated in § 203.19(b).

(2) *EFTPS.*

(i) *ACH debit and ACH credit.* A note option depositary processing EFTPS ACH debit entries and/or ACH credit entries shall credit its note balance for the value of the transactions on the date that an exchange of funds is reflected on the books of the Federal Reserve Bank of the district. Financial institutions may refer to the procedural instructions for information on how to ascertain the amount of the credit to the note balance.

(ii) *Fedwire non-value and Direct Access.* A note option depositary processing Fedwire non-value and/or Direct Access transactions pursuant to subpart B of this part shall credit its note balance and debit its customer's account for the value of the transactions on the date ETA receives and processes the transactions.

(b) *Other additions.* Other funds from Treasury may be offered from time to time to certain note option depositaries through direct investments, special direct investments, or other investment programs.

(c) *Note balance withdrawals.* The amount of the note balance shall be payable on demand without prior notice. Calls for payment on the note will be by direction of the Secretary through the FRBs. On behalf of Treasury, the FRB shall charge the reserve account of the depositary or the depositary's designated correspondent on the day specified in the call for payment.

(d) *Interest.* A note shall bear interest at the TT&L rate. Such interest is payable by a charge to the Federal Reserve account of the depositary or its designated correspondent in the manner prescribed in the procedural instructions.

(e) *Maximum balance.*

(1) *Note option depositaries.* A depositary selecting the note option shall establish a maximum balance for its note by providing notice to that effect in writing to the FRB of the district. The maximum balance is the amount of funds for which a note option depositary is willing to provide collateral in accordance with § 203.24(c)(1). The depositary shall provide the advance notice required in the procedural instructions before reducing the established maximum balance unless it is a reduction resulting from a collateral re-evaluation as determined by the depositary's FRB. That portion of any advice of credit or EFTPS tax payment, which, when

posted at the FRB, would cause the note balance to exceed the maximum balance amount specified by the depositary, will be withdrawn by the FRB that day.

(2) *Direct investment depositaries.* A note option depositary that participates in direct investment shall set a maximum balance for direct investment purposes which is higher than its peak balance normally generated by the depositary's advices of credit and EFTPS tax payment inflow. The direct investment note option depositary shall provide the advance notice required in the procedural instructions before reducing the established maximum balance.

(3) *Special direct investment depositaries.* Special direct investments, while credited to the note balance, shall not be considered in setting the amount of the maximum balance or in determining the amounts to be withdrawn where a depositary's maximum balance is exceeded.

**§ 203.24 Collateral security requirements.**

Financial institutions that process EFTPS tax payments, but are not TT&L depositaries, have no collateral requirements under this part. Financial institutions that are note option depositaries or remittance option depositaries have collateral security requirements, as follows:

(a) *Note option.*

(1) *FTD deposits and EFTPS tax payments.* A depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(1), (d), and (e) of this section in an amount that is sufficient to cover the pre-established maximum balance for the note, and, if applicable, the closing balance in the TT&L account which exceeds recognized insurance coverage. Depositaries shall pledge collateral for the full amount of the maximum balance at the time the maximum balance is established. If the depositary maintains a TT&L account, the depositary shall pledge collateral security before crediting deposits to the TT&L account.

(2) *Direct investments.* A note option depositary that participates in direct investment is not required to pledge collateral continuously in the amount of the pre-established maximum balance. However, each note option depositary participating in direct investment shall pledge, no later than the day the direct investment is placed, the additional collateral in accordance with paragraphs (c)(1), (d), and (e) of this section to cover the total note balance including those funds received through direct investment. If a direct investment depositary has a history of frequent collateral deficiencies, it shall fully collateralize its maximum balance at all times.

(3) *Special direct investments.* Before special direct investments are credited to a depositary's note balance, the note option depositary shall pledge collateral security, in accordance with the requirements of paragraphs (c)(2) and (e) of this section, to cover 100 percent of the amount of the special direct investments to be received.

(b) *Remittance option.* Prior to crediting FTD deposits to the TT&L account, a remittance option depositary shall pledge collateral security in accordance with the requirements of paragraph (c)(1), (d), and (e) of this section in an amount which is sufficient to cover the balance in the TT&L account at the close of business each day, less recognized insurance coverage.

(c) *Deposits of securities.*

(1) Collateral security required under paragraphs (a)(1), (2), and (b) of this section shall be deposited with the FRB of the district, or with a custodian or custodians within the United States designated by the FRB, under terms and conditions prescribed by the FRB.

(2)(i) Collateral security required under paragraph (a)(3) of this section shall be pledged under a written security agreement on a form provided by the FRB of the district. The collateral security pledged to satisfy the requirements of paragraph (a)(3) of this section may remain in the pledging depositary's possession and the fact that it has been pledged shall be evidenced by advices of custody to be incorporated by reference in the written security agreement. The written security agreement and all advices of custody covering collateral security pledged under that agreement shall be provided by the depositary to the FRB of the district. Collateral security pledged under the agreement shall not be substituted for or released without the advance approval of the FRB of the district, and any collateral security subject to the security agreement shall remain so subject until an approved substitution is made. No substitution or release shall be approved until an advice of custody containing the description required by the written security agreement is received by the FRB of the district.

(ii) Treasury's security interest in collateral security pledged by a depositary in accordance with paragraph (c)(2)(i) of this section to secure special direct investments is perfected without Treasury taking possession of the collateral security for a period not to exceed 21 calendar days from the day of the depositary's receipt of the special direct investment.

(d) *Acceptable securities.* Unless otherwise specified by the Secretary, collateral security pledged under this section may be transferable securities, owned by the depositary free and clear of all liens, charges, or claims, of any of the classes listed in the procedural instructions. Collateral values will be assigned by the FRB of the district.

(e) *Assignment of securities.* A TT&L depositary that pledges acceptable securities which are not negotiable without its endorsement or assignment may furnish, in lieu of placing its unqualified endorsement on each security, an appropriate resolution and irrevocable power of attorney authorizing the FRB to assign the securities. The resolution and power of attorney shall conform to such terms and conditions as the FRB shall prescribe.

(f) *Effecting payments of principal and interest on securities pledged as collateral.*

(1) *General.* If the depositary fails to pay, when due, the whole or any part of the funds received by it for credit to the TT&L account, and/or if applicable, its note balance; or otherwise violates or fails to perform any of the terms of this part, or fails to pay when due amounts owed to the United States or the United States Treasury; or if the depositary is closed for business by regulatory action or by proper corporate action, or in the event that a receiver, conservator, liquidator or any other officer is appointed; then the Treasury, without notice or demand, may sell, or otherwise collect the proceeds of all or part of the collateral, including additions and substitutions; and apply the proceeds, to satisfy any claims of the United States against the depositary. All principal and interest payments on any security pledged to protect the note balance (if applicable) and/or the TT&L account (if applicable), due as of the date of the insolvency or closure, or thereafter becoming due, shall be held separate and apart from any other assets and shall constitute a part of the pledged security available to satisfy any claim of the United States.

(2) *Payment procedures.*

(i) Subject to the waiver in paragraph (f)(2)(iii) of this section, each depositary (including, with respect to such depositary, an assignee for the benefit of creditors, a trustee in bankruptcy, or a receiver in equity) shall immediately remit each payment of principal and/or interest received by it with respect to collateral pledged pursuant to this section to the FRB of the district, as fiscal agent of the United States, and in

any event shall so remit no later than 10 days after receipt of such a payment.

(ii) Subject to the waiver in paragraph (f)(2)(iii) of this section, each obligor on a security pledged by a depositary pursuant to this section, upon notification that the Treasury is entitled to any payment associated with that pledged security, shall make each payment of principal and/or interest due with respect to such security directly to the FRB of the district, as fiscal agent of the United States.

(iii) The requirements of paragraphs (f)(2)(i) and (ii) of this section are hereby waived for only so long as a pledging depositary avoids both termination from the program under § 203.7; and also, those circumstances identified in paragraph (f)(1) which may lead to the collection of the proceeds of collateral or the waiver is otherwise terminated by Treasury.

Dated: January 27, 1998.

**Richard L. Gregg,**

*Acting Commissioner.*

[FR Doc. 98–2494 Filed 2–2–98; 8:45 am]

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Federal Register

Tuesday
February 3, 1998

## Part IV

# Department of Housing and Urban Development

**24 CFR Part 203**

**Suspension of Authority To Insure New FHA Single Family Mortgages on Indian Reservations Pursuant to Section 248 of the National Housing Act; Proposed Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 203**

**[Docket No. FR–4251–P–01]**

**RIN 2502–AH00**

## Suspension of Authority To Insure New FHA Single Family Mortgages on Indian Reservations Pursuant to Section 248 of the National Housing Act

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to suspend the authority of the HUD Secretary to provide FHA insurance pursuant to section 248 of the National Housing Act for mortgage loans made for the financing of single family homes on Indian reservations. The suspension would be in effect whenever authority is available to the Department to guarantee additional loans under its Indian Housing Loan Guarantee program authorized by section 184 of the Housing and Community Development Act of 1992. The rule would suspend a program that has not been effective in promoting housing opportunities for Native Americans and permit HUD to focus scarce resources on the similar section 184 program, whenever authority under that program is available. In recent fiscal years the Department has received annually a limited amount of additional authority to guarantee new loans under section 184. If that pattern is not continued, or if the available section 184 authority is otherwise exhausted, the Department would resume mortgage insurance under the section 248 program.

**DATES:** Comment due date: April 6, 1998.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. An original and four copies of comments should be provided. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

**FOR FURTHER INFORMATION CONTACT:** John J. Coonts, Office of the Insured Single Family Housing, Room 9162, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3046. (This is not a toll-free number.) For hearing-and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

The mortgage insurance program for mortgages on Indian reservations was initially authorized under the Housing and Urban—Rural Recovery Act of 1983, which added Section 248 to the National Housing Act. The Department implemented the program by a final rule (51 FR 21871, June 16, 1986) that added several new provisions to 24 CFR part 203, including new §§ 203.43h, 203.438 and 203.664 and amendments to §§ 203.350 and 203.604.

The new program was intended to encourage mortgage lenders to extend loans on Indian reservations and other trust or restricted land (''Indian land''). Indian land is generally subject to restraints against alienation and other title issues, and mortgage lenders are reluctant to make mortgage loans because of the extreme difficulty in bringing and completing a foreclosure action, if the mortgagor defaults. Because FHA generally requires a mortgagee to convey good marketable title to the HUD Secretary in presenting a claim for insurance, and good marketable title is difficult or impossible to obtain as a result of a foreclosure on Indian land, mortgage lenders were hesitant to make such mortgage loans.

Section 248 provided ways to mortgagees to overcome these title and claim issues, primarily by providing the lender with a right to assign a defaulted mortgage to the HUD Secretary, but the program has always operated at a very low volume. The Clinton Administration has made extensive efforts over the past four years to publicize the program and encourage its use. Mortgage lenders and Native Americans, however, have found another similar HUD program—the section 184 loan guarantee program—to be more attractive based on the large volume of loans made in comparison to the history of section 248. Thus, the Department believes it is smart management to apply its resources to a program that works and accomplishes the same goals. Section 184 has proven to be substantially more effective in providing housing opportunities for Native Americans. Under a Memorandum of Understanding, the HUD Office of Insured Single Family Housing will provide support to the HUD Office of Native American Programs to assure that the lending community and Native Americans have adequate access to information about Section 184.

The Department proposes to amend § 203.43h to suspend new insurance, excepting only cases with a HUD conditional commitment or DE underwriter's Statement of Appraised Value issued no later than 90 days after the effective date of the final rule, as long as the Department has authority to guarantee new loans under its section 184 program. Insurance for streamlined refinancing would continue to be available for any mortgage that has been insured under section 248.

### Findings and Certifications

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule merely suspends new insurance for a program that has no significant volume, whenever the Department has guarantee authority under the similar but more successful section 184 program. Any lenders that participated in the suspended program can easily qualify to participate under the section 184 program. The proposed rule has no adverse or disproportionate economic impact on small businesses. Small entities are specifically invited, however, to comment on whether this proposed rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this proposed rule.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule

would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes would result from this proposed rule that affect the relationship between the Federal Government and State and local governments.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

**List of Subjects in Part 203**

Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend part 203 of Title 24 of the Code of Federal Regulations as follows:

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Section 203.43h is amended by revising the introductory text to read as follows:

**§ 203.43h Eligibility of mortgages on Indian land insured pursuant to Section 248 of the National Housing Act.**

No mortgage will be insured pursuant to section 248 of the National Housing Act unless the Secretary determined that there is no available authority to guarantee a mortgage under section 184 of the Housing and Community Development Act of 1992, or before [a date of 90 days after the effective date of final rule will be inserted in the final rule] the Secretary issued a conditional commitment or a Direct Endorsement underwriter issued a Statement of Appraised Value in connection with the mortgage. If insurance is available under the preceding sentence, a mortgage covering a one-to-four family residence located on Indian land shall be eligible for insurance pursuant to section 248 of the National Housing Act (12 U.S.C. 1715z-13), notwithstanding otherwise applicable requirements related to marketability of title, if the mortgage meets the requirements of this subpart as modified by this section and is made by an Indian tribe, or on a leasehold estate by an Indian who will occupy it as a principal residence. Mortgage insurance on cooperative shares is not authorized under this section.

* * * * *

Dated: December 10, 1997.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 98–2621 Filed 2–2–98; 8:45 am]

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Federal Register

Tuesday
February 3, 1998

# Part V

# Department of Labor

## Mine Safety and Health Administration

# Department of Health and Human Services

## Centers for Disease Control and Prevention

**Mine Shift Atmospheric Conditions; Respirable Dust Sample; and Coal Mine Respirable Dust Standard Noncompliance Determinations; Correction and Republication; Notices**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**RIN 1219–AA82**

## Mine Shift Atmospheric Conditions; Respirable Dust Sample

*Correction and Republication*

**Note**: For the convenience of the user, notice document 97–33934 is being reprinted in its entirety because of numerous errors in the document originally appearing at 62 FR 68372–68395, December 31, 1997. Those wishing to see a listing of corrections, please call Patricia Silvey, Mine Safety and Health Administration, 703–235–1910.

**AGENCIES:** Mine Safety and Health Administration, Labor, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, HHS.

**ACTION:** Final notice of joint finding.

**SUMMARY:** This notice announces that the Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) find, in accordance with sections 101 and 202(f)(2) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811 and 842(f) respectively, that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. This notice should be read in conjunction with the notice published separately by the Mine Safety and Health Administration (MSHA) elsewhere in today's **Federal Register**. The Secretaries are rescinding the previous finding, which was proposed on July 17, 1971 and issued on February 23, 1972, by the Secretary of the Interior and the Secretary of Health, Education and Welfare.

**EFFECTIVE DATE:** This notice will be effective on March 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations and Variances; MSHA; 703–235–1910.

**SUPPLEMENTARY INFORMATION:** In accordance with section 202(f)(2) and section 101 of the Mine Act, this notice is published jointly by the Secretaries of the Departments of Labor, and Health and Human Services.

### I. Introduction

For as long as miners have taken coal from the ground, the presence of respirable dust in coal mines has been a source of health problems for miners. Coal workers' pneumoconiosis, one of the most insidious of occupational diseases, is caused by deposits of coal mine dust in the lung and is known as ''black lung disease.'' The disability that may result from these deposits can range from slightly impaired lung function to significant decreases in lung function resulting in breathlessness, recurrent chest illness, and even heart failure. In addition, the disease may progress even after the miner is no longer exposed to coal mine dust.

The Federal Coal Mine Health and Safety Act of 1969 (Coal Act) established the first comprehensive dust standard for underground U.S. coal mines by setting a limit of 2.0 milligrams of respirable coal mine dust per cubic meter of air ($mg/m^3$). The 2.0 $mg/m^3$ standard sets a limit on the concentration of respirable coal mine dust permitted in the mine atmosphere during each shift to which each miner in the active workings of a mine is exposed. Congress was convinced that the only way each miner could be protected from black lung disease or other occupational dust disease was by limiting the amount of respirable dust allowed in the air that miners breathe.

The Coal Act was subsequently amended by the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 *et seq.* The standard limiting respirable dust in the mine atmosphere to 2.0 $mg/m^3$ was retained in the Mine Act, which also required that ''each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air.'' Section 202(b)(2). (Other provisions in the Mine Act, sections 205 and 203(b)(2), provide for lowering the applicable standard when quartz is present and when miners with evidence of pneumoconiosis have elected to work in a low-dust work environment.)

Today, dust levels in underground U.S. coal mines are significantly lower than they were when the Coal Act was passed. Federal mine inspector sampling results during 1968–1969 show that the average dust concentration in the environment of a continuous miner operator was 7.7 $mg/m^3$. Current sampling indicates that the average dust level for that occupation has been reduced by 83 percent to 1.3 $mg/m^3$. Despite this progress, the Secretaries believe that occupational lung disease continues to present a serious health risk to coal miners. In November 1995, the National Institute for Occupational Safety and Health (NIOSH) issued a criteria document which concluded that coal miners in our country continue to be at risk for developing black lung disease.

The Secretary of Labor believes that miners' health can be further protected from the debilitating effects of black lung disease by improving their workplace conditions through more effective assessment of respirable dust concentrations during individual, full shifts. On February 18, 1994, the Secretary of Labor and the Secretary of Health and Human Services published a notice in the **Federal Register** proposing to find that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift in accordance with section 202(f)(2) of the Mine Act (56 FR 8357). Additionally, the Secretaries proposed to rescind the previous finding, which was proposed on July 17, 1971 (36 FR 13286) and issued on February 23, 1972 (37 FR 3833), by the Secretary of the Interior and the Secretary of Health, Education and Welfare.

### II. General Discussion

The issues related to this finding are complex and highly technical. The Agencies have organized this final notice to allow interested persons to first consider pertinent introductory material on the Agencies' 1972 notice and its recision, and a short overview of the NIOSH mission and assessment of this finding, as well as those aspects of MSHA's coal mine respirable dust program relevant to this finding. Following this introductory material is a discussion of the ''measurement objective,'' or what the Secretaries intend to measure with a single, full-shift measurement, and the use of the NIOSH Accuracy Criterion for determining whether a single, full-shift measurement will ''accurately represent'' the full-shift atmospheric dust concentration. Next, the validity of the sampling process is addressed, including the performance of the approved sampler unit, sample collection procedures, and sample processing. The concept of measurement uncertainty is then addressed, and why sources of dust concentration variability and various other factors are not relevant to the finding. Finally, the notice explains how the total measurement uncertainty was quantified, and how the accuracy of a single, full-shift measurement was shown to meet the NIOSH Accuracy Criterion. Several Appendices, which

contain relevant technical information, are attached and incorporated with this notice. The Agencies have additionally included references to the Appendices throughout this notice.

*A. The 1971/1972 Joint Notice of Finding*

In 1971 the Secretary of the Interior and the Secretary of Health, Education and Welfare proposed, and in 1972 issued, a joint finding under the Coal Act. The finding concluded that a single shift measurement would not, after applying valid statistical techniques, accurately represent the atmospheric conditions to which the miner is continuously exposed. For the reasons that follow, the Secretaries believe that the 1972 joint finding was incorrect.

Section 202(b)(2) of the Coal Act provided that ''each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below [the applicable respirable dust standard].'' In addition, the term ''average concentration'' was defined in section 202(f) of the Coal Act as follows:

> * * * the term ''average concentration'' means a determination which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed (1) as measured during an 18 month period following the date of enactment of this Act, over a number of continuous production shifts to be determined by the Secretary of the Interior and the Secretary of Health, Education and Welfare, and (2) as measured thereafter, over a single shift only, unless the Secretary of the Interior and the Secretary of Health, Education and Welfare find, in accordance with the provisions of section 101 of this Act, that such single shift measurements will not, after applying valid statistical techniques to such measurement, accurately represent such atmospheric conditions during such shift.

Therefore, 18 months after the statute was enacted, the ''average concentration'' of respirable dust in coal mines was to be measured over a single shift only, unless the Secretaries found that doing so would not accurately represent mine atmospheric conditions during such shift. If the Secretaries found that a single shift measurement would not, after applying valid statistical techniques, accurately represent mine atmospheric conditions during such shift, then the interim practice of averaging measurements ''over a number of continuous production shifts'' was to continue.

On December 16, 1969, the U.S. Congress published a Conference Report in support of the new Coal Act. The Report refers to section 202(f) by noting that:

> At the end of this 18 month period, it requires that the measurements be over one production shift only, unless the Secretar[ies] * * * find, in accordance with the standard setting procedures of section 101, that single shift measurements will not accurately represent the atmospheric conditions during the measured shift to which the miner is continuously exposed [Conference Report, page 75].

This Report is inconsistent with the wording of the section 202(f), which seeks to apply a single, full-shift measurement to ''accurately represent such atmospheric conditions during such shift.'' Section 202(f) does not mention continuous exposure. The Secretaries believe that the use of this phrase is confusing, and to the extent that any weight of interpretation can be given to the legislative history, that the Senate's Report of its bill provides a clearer interpretation of section 202(f) when read together with the statutory language. The Senate Committee noted in part that:

> The committee * * * intends that the dust level not exceed the specified standard during any shift. It is the committee's intention that the average dust level at any job, for any miner in any active working place during each and every shift, shall be no greater than the standard.

Following passage of the Coal Act, the Bureau of Mines (MSHA's predecessor Agency within the Department of the Interior) expressed a preference for multi-shift sampling. Correspondence exchanged during that time period of 1969 to 1971 reflected concern over the technological feasibility of controlling dust levels to the limits established, and the potentially disruptive effects of mine closure orders because of noncompliance with the respirable dust limits. Both industry and government officials feared that basing noncompliance determinations on single, full-shift measurements would increase those problems. In June 1971, the then-Associate Solicitor for Mine Safety and Health at the Department of the Interior issued a legal interpretation of section 202(f), concluding that the average dust concentration was to be determined by measurements that accurately represent respirable dust in the mine atmosphere over time rather than during a shift. On July 17, 1971, the Secretaries of the Interior and of Health, Education and Welfare issued a proposed notice of finding under section 202(f) of the Coal Act. The finding concluded that, ''a single shift measurement of respirable dust will not, after applying valid statistical techniques to such measurement, accurately represent the atmospheric conditions to which the miner is continuously exposed'' (36 FR 13286).

In February, 1972, the final finding was issued (37 FR 3833). It concluded that:

> After careful consideration of all comments, suggestions, and objections, it is the conclusion of the Secretary of the Interior and the Secretary of Health, Education, and Welfare that a valid statistical technique was employed in the computer analysis of the data referred to in the proposed notice [footnote omitted] and that the data utilized was accurate and supported the proposed finding. Both Departments also intend periodically to review this finding as new technology develops and as new dust sampling data becomes available.
>
> The Departments intend to revise part 70 of Title 30, Code of Federal Regulations, to improve dust measuring techniques in order to ascertain more precisely the dust exposure of miners. To complement the present system of averaging dust measurements, it is anticipated that the proposed revision would use a measurement over a single shift to determine compliance with respirable dust standards taking into account (1) the variation of dust and instrument conditions inherent in coal mining operations, (2) the quality control tolerance allowed in the manufacture of personal sampler capsules, and (3) the variation in weighing precision allowed in the Bureau of Mines laboratory in Pittsburgh.
>
> The proposed finding, as set forth at 36 F.R. 13286, that a measurement of respirable dust over a single shift only, will not, after applying valid statistical techniques to such measurement, accurately represent the atmospheric conditions to which the miner under consideration is continuously exposed, is hereby adopted without change.

As explained in the 1971 proposed finding, the average concentration of all ten full-shift samples (from one occupation) submitted from each working section under the regulations in effect at the time (these were the ''basic samples'' referred to in the proposed notice of finding) was compared with the average concentration of the two most recently submitted samples, then to the three most recently submitted samples, then to the four most recently submitted samples, etc. In discussing the results of these comparisons the Secretaries stated that '' * * * the average of the two most recently submitted samples of respirable dust was statistically equivalent to the average concentration of the current basic samples for each working section in only 9.6 percent of the comparisons.''

The title of the 1971/1972 notice and the conclusion it reaches are clearly inconsistent. The title states that it is a ''Notice of Finding That Single Shift Measurements of Respirable Dust Will Not Accurately Represent Atmospheric Conditions During Such Shift.''

However, the conclusion states that, ''* * * a single shift measurement * * * will not, after applying valid statistical techniques * * * accurately represent the atmospheric conditions to which the miner is *continuously* exposed'' (emphasis added).

The Secretaries have determined that section 202(f) requires a determination of accuracy with respect to ''atmospheric conditions during such shift,'' not ''atmospheric conditions to which the miner is continuously exposed'' (37 FR 3833). The statistical analysis referenced in the 1971/1972 proposed and final findings simply did not address the accuracy of a single, full-shift measurement in representing atmospheric conditions during the shift on which it was taken. For this and other reasons set forth in the notice, the Secretaries hereby rescind the 1972 joint final finding.

## III. NIOSH Mission Statement and Assessment of the Joint Finding

The National Institute for Occupational Safety and Health (NIOSH) was created by Congress in the Occupational Safety and Health Act in 1970. The Act established NIOSH as part of the Department of Health and Human Services to identify the causes of work-related diseases and injuries, evaluate the hazards of new technologies, create new ways to control hazards to protect workers, and make recommendations for new occupational safety and health standards. Under section 501 of the Mine Act, Congress gave specific research responsibilities to NIOSH in the field of coal or other mine health. These responsibilities include the authority to conduct studies, research, experiments and demonstrations, in order ''to develop new or improved means and methods of reducing concentrations of respirable dust in the mine atmosphere of active workings of the coal or other mine,'' and also ''to develop techniques for the prevention and control of occupational diseases of miners * * *.''

When the initial finding, issued under section 202(f) of the Coal Act, was published in 1972, both the Secretary of the Interior and the Secretary of Health, Education and Welfare (the predecessor to the Department of Health and Human Services) indicated that the finding would be reassessed as new technology was developed, or new data became available. The Secretary of Health and Human Services, through delegated authority to the National Institute for Occupational Safety and Health, has reconsidered the provisions of section 202(f) of the Mine Act, reviewed the current state of technology and other scientific advances since 1972, and has determined that the following innovations and technological advancements are important factors in the reassessment of the 1971/1972 joint finding.

In 1977 NIOSH published its ''Sampling Strategies Manual,'' which provided a framework for the statistical treatment of occupational exposure data [DHEW (NIOSH) Publication No. 77–173; Sec. 4.2.1]. Additionally, that year, NIOSH first published the NIOSH Accuracy Criterion, which was developed as a goal for methods to be used by OSHA for compliance determinations [DHEW (NIOSH) Publication No. 77–185; pp. 1–5]. In 1980, new mine health standards issued by the Secretary of Labor (30 CFR parts 70, 71, and 90) improved the quality of the sampling process by revising sampling, maintenance, and calibration procedures. Prior to 1984, filter capsules used in sampling were manually weighed by MSHA personnel using semi-micro balances, making precision weights to the nearest 0.1 mg (100 micrograms). In 1984, a fully-automated, robotic weighing system was introduced along with state-of-the-art electronic microbalances. In 1994, the balances were further upgraded, and in 1995 the weighing system was again improved, increasing weighing sensitivity to the microgram level. Also, in 1987, electronic flow-control sampling pump technology was introduced in the coal mine dust sampling program with the use of MSA FlowLite™ pumps.[1] These new pumps compensate for the changing filter flow-resistance that occurs due to dust deposited during the sampling period. The second generation of constant-flow sampling pumps was introduced in 1994, with the introduction of the MSA Escort ELF® pump. The automatic correction provided by these new pumps improves the stability of the sampler air flow rates and reduces the inaccuracies that were inherent in the 1970–1980s vintage sampling pumps. One further improvement was made in 1992 with the introduction of the new tamper-resistant filter cassettes. Because of these evolving improvements to the sampling process, a better understanding of statistical methods applied to method accuracy, and a reconsideration of the requirements of section 202(f) of the Mine Act, the Secretary of Health and Human Services has determined that the previous joint finding should be reevaluated.

[1] Reference to specific equipment, trade names or manufacturers does not imply endorsement by NIOSH or MSHA.

## IV. MSHA Mission Statement and Overview of the Respirable Dust Program

With the enactment of the Mine Act, Congress recognized that ''the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner.'' Congress further realized that there ''is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines.'' With these goals in mind, MSHA is given the responsibility to protect the health and safety of the Nation's coal and other miners by enforcing the provisions of the Mine Act.

### *A. The Coal Mine Respirable Dust Program*

In 1970, federal regulations were issued by MSHA's predecessor agency that established a comprehensive coal mine operator dust sampling program, which required the environment of the occupation on a working section exposed to the highest respirable dust concentration to be sampled—the ''high risk occupation'' concept. All other occupations on the section were assumed to be protected if the high risk occupation was in compliance. Under this program, each operator was required to initially collect and submit ten valid respirable dust samples to determine the average dust concentration (across ten production shifts). If analysis showed the average dust concentration to be within the applicable dust standard, the operator was required to submit only five valid samples a month. If compliance continued to be demonstrated, the operator was required to take only five valid samples every other month. The initial, monthly, and bimonthly sampling cycles were referred to as the ''original,'' ''standard,'' and ''alternative sampling'' cycles, respectively. When the average dust concentration exceeded the standard, the operator reverted back to the standard sampling cycle.

In addition to sampling the high risk occupation at specified frequencies, each miner was sampled individually at different intervals. However, these early individual sample results were not used for enforcement but were provided to NIOSH for medical research purposes.

MSHA revised these regulations in April 1980 (45 FR 23990) to reduce the

operator sampling burden, to simplify the sampling process, and to enhance the overall quality of the sampling program. The result was to replace the various sampling cycles with a bimonthly sampling cycle and to eliminate the requirement that each miner be sampled. These are the regulations that currently govern the mine operator dust sampling program, and which continue to be based on the high risk occupation concept, now referred to as the ''designated occupation'' or ''D.O.'' sampling concept.

It should be noted that the preamble to the final rule amending the regulations in April 1980 (45 FR 23997), explicitly refers to the use of single versus multiple samples as it applies to the operator respirable dust sampling program.

> Compliance determinations will generally be based on the average concentration of respirable dust measured by five valid respirable dust samples taken by the operator during five consecutive shifts, or five shifts worked on consecutive days. Therefore, the sampling results upon which compliance determinations are made will more accurately represent the dust in the mine atmosphere than would the results of only a single sample taken on a single shift. In addition, MSHA believes the revised sampling and maintenance and calibration procedures prescribed by the final rule will significantly improve the accuracy of sampling results.

At the time of these amendments, MSHA examined section 202(b)(2) of the Coal Act, which was retained unchanged in the 1977 Mine Act. The Agency stated in the preamble to the final rule that:

> Although single-shift respirable dust sampling would be most compatible with this single-shift standard, Congress recognized that variability in sampling results could render single-shift samples insufficient for compliance determinations. Consequently, Congress defined ''average concentration'' in section 202(f) of the 1969 Coal Act which is also retained in the 1977 Act.

MSHA believes that this interpretation merely recognized the two ways of measurement authorized in section 202(f), and expressed the preference on the part of MSHA in 1980 to retain multi-shift sampling in the operator sampling program. The phrase used in the preamble to the final rule reflects that MSHA understood that the 2.0 mg/m$^3$ limit was a single-shift standard, which was not to be exceeded on a shift. The preamble referenced the continuous multi-shift sampling and single-shift sampling conducted by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, and noted that in the 1971/1972 proposed and final findings,

> It had been determined after applying valid statistical techniques, * * * that a single shift sample should not be relied upon for compliance determinations when the respirable dust concentration being measured was near 2.0 mg/m$^3$. Accordingly, the [Secretaries] prescribed consecutive multi-shift samples to enforce the respirable dust standard.

The preamble provides no further explanation for the statement that single-shift samples should not be relied on when the respirable dust concentration being measured was near 2.0 mg/m$^3$. Thus, the 1980 final rule, which reduced the number of samples that operators were required to take for compliance determinations, merely reiterated the rationale behind the 1971/1972 proposed and final findings concerning single-shift samples, and did not address the accuracy of a single, full-shift measurement.

MSHA continues to take an active role in sampling for respirable dust by conducting inspections annually at each surface and underground coal mine. During these inspections, MSHA inspectors collect samples on multiple occupations to determine compliance with the applicable standard, assess the effectiveness of the operator's dust control program, quantify the level of crystalline silica (quartz) in the work environment, and identify occupations other than the ''D.O.'' which may be at risk and should be monitored by the mine operator.

Depending on the concentration of dust measured, an MSHA inspector may terminate sampling after the first day if levels are very low, or continue for up to five shifts or days before making a compliance or noncompliance determination. MSHA inspection procedures require inspectors to sample at least five occupations, if available, on each mechanized mining unit (MMU) on the first day of sampling. The operator is cited if the average of those measurements exceeds the applicable standard. However, if the average falls below the standard, but one or more of the measurements exceed it, additional samples are collected on the subsequent production shift or day. The results of the first and second day of sampling on all occupations are then averaged to determine if the applicable standard is exceeded. Additionally, when an inspector continues sampling after the first day because a previous measurement exceeds the standard, MSHA's procedures call for all measurements taken on a given occupation to be averaged individually for that occupation. If the average of measurements taken over more than one day on all occupations is equal to or less than the applicable standard, but the average of measurements taken on any one occupation exceeds the value in a decision table developed by MSHA (based on the cumulative concentration for two or more samples exceeding 10.4 mg/m$^3$, which is equivalent to a 5-measurement average exceeding 2.0 mg/m$^3$), the operator is cited for exceeding the applicable standard.

*B. The Spot Inspection Program (SIP)*

In response to concerns about possible tampering with dust samples in 1991, MSHA convened the Coal Mine Respirable Dust Task Group (Task Group) to review the Agency's respirable dust program. As part of that review, MSHA developed a special respirable dust ''spot inspection program'' (SIP).

This program was designed to provide the Agency with information on the dust levels to which underground miners are typically exposed. Because of the large number of mines and MMUs (mechanized mining units) involved and the need to obtain data within a short time frame, respirable dust sampling during the SIP was limited to a single shift or day, a departure from MSHA's normal sampling procedures. The term ''MMU'' is defined in 30 CFR 70.2(h) to mean a unit of mining equipment, including hand loading equipment, used for the production of material. As a result, MSHA decided that if the average of multiple occupation measurements taken on an MMU during any one-day inspection did not exceed the applicable standard the inspector would review the result of each individual full-shift sample. If any individual full-shift measurement exceeded the applicable standard by an amount specified by MSHA, a citation would be issued for noncompliance, requiring the mine operator to take immediate corrective action to lower the average dust concentration in the mine atmosphere in order to protect miners.

During the SIP inspections, MSHA inspectors cited violations of the 2.0 mg/m$^3$ standard if either the average of the five measurements taken on a single shift was greater than or equal to 2.1 mg/m$^3$, or any single, full-shift measurement exceeded or equaled 2.5 mg/m$^3$. Similar adjustments were made when the 2.0 mg/m$^3$ standard was reduced due to the presence of quartz dust in the mine atmosphere.

The procedures issued by MSHA's Coal Mine Safety and Health Division during the SIP were similar to those used by the MSHA Metal/Nonmetal Mine Safety and Health Division and

the Occupational Safety and Health Administration (OSHA) when determining whether to cite based on a single, full-shift measurement. That practice provides for a margin of error reflecting an adjustment for uncertainty in the measurement process (i.e., sampling and analytical error). The margin of error thus allows citations to be issued only where there is a high level of confidence that the applicable standard has been exceeded.

Based on the data from the SIP inspections, the Task Group concluded that MSHA's practice of making noncompliance determinations solely on the average of multiple-sample results did not always result in citations in situations where miners were known to be overexposed to respirable coal mine dust. For example, if measurements obtained for five different occupations within the same MMU were 4.1, 1.0, 1.0, 2.5, and 1.4 mg/$m^3$, the average concentration would be 2.0 mg/$m^3$. Although the dust concentration for two occupations exceeds the applicable standard, under MSHA procedures no citation would have been issued nor any corrective action required to reduce dust levels to protect miners' health. Instead, MSHA policy required the inspector to return to the mine the next day that coal was being produced and resume sampling in order to decide if the mine was in compliance or not in compliance.

The Task Group also recognized that the results of the first full-shift samples taken by an inspector during a respirable dust inspection are likely to reflect higher dust concentrations than samples collected on subsequent shifts or days during the same inspection. MSHA's comparison of the average dust concentration of inspector samples taken on the same occupation on both the first and second day of a multiple-day sampling inspection showed that the average concentration of all samples taken on the first day of an inspection was almost twice as high as the average concentration of samples taken on the second day. MSHA recognized that sampling on successive days does not always result in measurements that are representative of everyday respirable dust exposures in the mine because mine operators can anticipate the continuation of inspector sampling and make adjustments in dust control parameters or production rates to lower dust levels during the subsequent sampling.

In response to these findings, in November 1991, MSHA decided to permanently adopt the single shift inspection policy initiated during the SIP.

*C. The Keystone Decision*

In 1991, three citations based on single, full-shift measurements were issued under the SIP to the Keystone Coal Mining Corporation. The violations were contested, and an administrative law judge from the Federal Mine Safety and Health Review Commission (Commission) vacated the citations. The decision was appealed by the Secretary of Labor to the Commission because the Secretary believed that the administrative law judge was in error in finding that rulemaking was required under section 202(f) of the Mine Act for the Secretary to use single, full-shift measurements for noncompliance determinations. In addition, the Secretary contended that the 1971/1972 finding pertained to operator sampling and that the SIP at issue involved only MSHA sampling. The Commission, which affirmed the decision of the administrative law judge, found that:

> Title II [of the Mine Act] applies to both operator sampling and to MSHA actions to ensure compliance, including sampling by MSHA. Section 202(g) specifically provides for MSHA spot inspections. Nothing in § 202(f) or § 202(g) suggests that § 202(f) applies differently to MSHA sampling. Thus, the 1971 finding, issued for purposes of Title II, applies broadly to both MSHA and operator sampling of the mine atmosphere.

The Commission also held that the revised MSHA policy was in contravention of the 1971/1972 finding and could only be altered if the requirements of the Mine Act and the Administrative Procedure Act, 5 U.S.C. 550, were met.

## V. Executive Order 12866 and Regulatory Impact Analysis

MSHA has designated this joint finding as a significant action; it has been reviewed by OMB under E.O. 12866. MSHA estimates that the total annual costs associated with the implementation of this finding will be $707,950, of which $446,125 will be incurred by underground coal mines and $261,825, incurred by surface coal operations. MSHA projects that this finding will result in reductions of future cases of occupational lung disease and attendant cost savings. MSHA has prepared a separate regulatory impact analysis which is available to the public upon request.

## VI. Procedural History of the Current Notices

As a result of the innovations and technological advancements described earlier, and the decision in *Keystone Coal* v. *Secretary of Labor*, 16 FMSHRC 6 (January 4, 1994), the Secretary of Labor and the Secretary of Health and Human Services published a proposed joint notice in the **Federal Register** on February 18, 1994 (59 FR 8357), pursuant to sections 101 and 202(f)(2) of the Mine Act. The notice proposed to rescind the 1971/1972 proposed and final findings by the Secretaries of the Interior and Health, Education and Welfare, and find that a single, full-shift measurement will accurately represent the atmospheric conditions with regard to the respirable dust concentration during the shift on which it was taken.

Concurrently, MSHA published a separate notice in the **Federal Register** announcing its intention to use both single, full-shift respirable dust measurements and the average of multiple, full-shift respirable dust measurements for noncompliance determinations (59 FR 8356). That notice was published to inform the mining public of how the Agency intended to implement its new enforcement procedure utilizing single, full-shift samples, and to solicit public comment on the new procedure.

The comment period on the proposed joint finding was scheduled to close on April 19, 1994, but was extended to May 20, 1994, in response to requests from the mining community (59 FR 16958). Subsequently, public comments were received, including comments from both labor and industry.

On July 6, 1994, in response to requests from the mining community, a public hearing was held on both notices in Morgantown, West Virginia (59 FR 29348). Also, in response to additional requests from the mining community, a second hearing was held on July 19, 1994, in Salt Lake City, Utah. To allow for the submission of post-hearing comments, the record was held open until August 5, 1994.

The hearings on the proposed joint notice were conducted by a joint MSHA/NIOSH panel. Presenters at the Morgantown hearing included international and local representatives of the United Mine Workers of America (UMWA), several mine operators, and a panel presentation from the American Mining Congress (AMC) and the National Coal Association (NCA). Presenters at the Salt Lake City hearing included the Utah Mining Association, several mine operators, and another joint AMC/NCA panel. The joint MSHA/NIOSH panel received prepared remarks from the presenters and asked questions as well. The joint agency panel also responded to questions from the presenters.

To ensure that all issues raised were fully considered, MSHA and NIOSH conducted a thorough review of existing data, engaged in an extensive literature

search, sought an independent analysis of the scientific validity of single, full-shift measurements, and conducted additional testing. These efforts resulted in the collection of a significant amount of information, which was made a part of the public record on September 9, 1994 (59 FR 50007). To allow interested parties the opportunity to review and comment on the supplemental material, the Agencies extended the comment period from September 30 to November 30, 1994.

After the close of the comment period, the Agencies reviewed all of the comments, data and other information submitted into the record. Some of the commenters raised questions regarding the accuracy of single, full-shift measurements and challenged the Agencies' estimate of measurement imprecision inherent in sample collection and analysis. While reviewing these issues, the Agencies concluded that the term ''accurately represent'' as used in section 202(f) needed to be defined because of the issues which commenters raised. In response, the Agencies reopened the record on March 12, 1996, to provide a criterion for ''accuracy'', to supply new data and statistical analytical analyses on the precision of coal mine respirable dust measurements obtained using approved sampling equipment, and to allow the public to review and submit comments on the supplemental information (61 FR 10012). In addition, the March 12 notice identified certain refinements in MSHA's measurement process as applied to inspector samples. These modifications, currently in place, involve the measurement of both pre- and post-exposure filter weights to the nearest microgram on a scale calibrated using the established procedure in MSHA's laboratory, and discontinuing the practice of truncating the recorded weights used in calculating the dust concentration (that is, MSHA no longer ignores digits representing hundredths and thousandths of a milligram).

The new comment period was scheduled to close on April 11, 1996, but was extended until June 10, 1996, in response to requests from the mining community. Additionally, on April 11, 1996, the Agencies announced their intention to conduct a second public hearing on the content of the March 12 notice (61 FR 16123). On May 10, 1996, a public hearing conducted by a joint MSHA/NIOSH panel was held in Washington, DC. One scheduled presenter, representing the UMWA, appeared at this hearing.

Some commenters expressed concern for the procedures used by the Agencies in making a new finding, asserting that MSHA and NIOSH were not complying with the rulemaking provisions of the Mine Act. These commenters contended that the recision of the final finding and implementation by MSHA of single, full-shift sampling can only be effectuated through notice and comment rulemaking. These commenters argue that because MSHA failed to appeal the *Keystone* case, MSHA was bound by the Commission decision in that case which mandated notice and comment rulemaking to rescind the prior finding and authorize use of single samples by the Agency.

MSHA and NIOSH have considered these comments, but believe that the process they have chosen to follow is consistent with the requirement of section 202(f) of the Mine Act, which provides that a finding shall be made ''in accordance with the provisions of section 101'' of the Mine Act. Section 101 contains the procedural requirements for promulgation of mandatory health and safety standards, including provision for notice and comment. All interested parties were given ample opportunity for notice and comment at every stage of consideration of the proposed joint finding. The Agencies are not developing, promulgating, or revising a mandatory health standard in this notice, nor is the 2.0 mg/m $^3$ respirable dust standard being revised. Moreover, the Agencies have made a finding that the average concentration of respirable dust in the mine atmosphere to which each miner in the active workings of a coal mine is exposed during a shift can be accurately measured with a single, full-shift sample. This is a scientific finding contemplated by section 202(f) of the Mine Act. While one commenter asserted that the Secretaries were not following proper notice and comment procedures in section 101 [e.g., sections 101(a)(1) through (9)], the only example given by the commenter is the fact that the notice was published in the ''Notice'' section, rather than the ''Proposed Rules'' or ''Rules and Regulations'' section of the **Federal Register**. Because this is not a mandatory safety and health standard, there is no need for the Secretaries to publish the finding as a proposed rule, or to address feasibility, for example, which would be required under section 101(a)(6)(A) when a mandatory safety or health standard is promulgated. The Secretaries have properly complied with all the procedural elements of section 101 which apply to this notice.

Some commenters referenced section 101(a)(9) of the Mine Act, 30 U.S.C. 811(a)(9), which provides that no mandatory standard shall reduce the protection afforded miners by an existing standard under the Mine Act. As stated previously, this scientific finding does not constitute rulemaking and is not a promulgation of a mandatory health standard. Rather, it is a ''finding'' under the Mine Act, established in the same manner as the initial finding, in 1972, the effect of which is to increase health protection for miners by allowing single, full-shift measurements to be used to determine average concentrations during a single work shift instead of continuing to rely solely on averaging the results of several days of sampling or sampling across various occupations on the same shift.

In MSHA's notice published on February 18, 1994 (59 FR 8356), the Agency specifically noted that any change to the substantive procedure for mine operator respirable dust sampling governed by MSHA regulations would require rulemaking by MSHA.

## VII. Issues Regarding Accuracy of a Single, Full-Shift Measurement

Some commenters questioned the accuracy of single, full-shift measurements, and challenged the Secretaries' assessment of measurement accuracy. Some commenters questioned the Secretaries' interpretation of section 202(b) of the Mine Act, while others agreed with the interpretation. The following issues were generally raised: the measurement objective as defined by the Mine Act; the definition of the term ''accurately represent'', as used in section 202(f); the validity of the sampling process; measurement uncertainty and dust concentration variability; and the accuracy of a single, full-shift measurement.

### *A. Measurement Objective*

Some comments reflected a general misunderstanding of what the Secretaries intend to measure with a single, full-shift measurement, i.e., the measurement objective. For example, some commenters asserted that the dust concentration that should be measured is dust concentration averaged over a period greater than a single shift. Some commenters noted that dust concentrations can vary during a shift and that dust concentration is not uniform throughout a miner's work area. In order to clarify the intent of the Secretaries, the explanation that follows describes the elements of the measurement objective and how the measurement objective relates to the requirements of section 202(f).

To evaluate the accuracy of a dust sampling method it is necessary to specify the airborne dust to be measured, the time period to which the

measurement applies, and the area represented by the measurement. Once specified, these items can be combined into a measurement objective. The measurement objective represents the goal of the sampling and analytical method to be utilized.

1. The Airborne Dust to be Measured

Section 202(f) of the Mine Act states that ''average concentration'' means '' * * * a determination [i.e., measurement] which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed.'' Later in section 202(f), the phrase ''atmospheric conditions'' is used to refer to the concentration of respirable dust. Therefore, the airborne dust to be measured is respirable dust. Section 202(e) defines respirable dust as the dust measured by an approved sampler unit.

2. Time Period to Which the Measurement Applies

Section 202(b)(2) provides that each mine operator ''* * * shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner * * * is exposed'' at or below the applicable standard. In section 202(f) ''average concentration'' is defined as an atmospheric condition measured ''over a single shift only, unless * * * such single shift measurement will not, after applying valid statistical techniques, accurately represent such atmospheric conditions during such shift.'' For the purpose of this notice, the Secretaries have determined that ''atmospheric conditions'' mean the fluctuating concentration of respirable coal mine dust during a single shift. These are the atmospheric conditions to which a sampler unit is exposed. Therefore, the present finding pertains only to the accuracy in representing the average of the fluctuating dust concentration over a single shift.

3. Area Represented by the Measurement

The Mine Act gives the Secretary of Labor the discretion to determine the area to be represented by respirable dust measurements collected over a single shift. As articulated by the United States Court of Appeals for the 10th Circuit in *American Mining Congress (AMC)* versus *Marshall,* 671 F.2d 1251 (1982), the Secretary of Labor may place the sampler unit in any area or location ''* * * reasonably calculated to prevent excessive exposure to respirable dust.'' Because the Secretary of Labor intends to prevent excessive exposure by limiting dust concentration at every location in the active workings, the area represented by any respirable dust measurement must be the sampling location.

Some commenters identified the dust concentration to be estimated as either the mean dust concentration over some period greater than an individual shift, the mean dust concentration over some spatially distributed region of the mine, or a ''grand mean'' consisting of some combination of the above. These comments were based on the false premise that the measurement objective in section 202(f) is something other than the average atmospheric conditions during a single shift at the sampling location. It is true that these mean quantities described by some commenters cannot be accurately estimated using a single, full-shift measurement, but the Secretaries make no claim of doing so, nor are they required to make such considerations.

Some commenters argued that Congress intended that the measurement objective be a long-term average. Specifically, some commenters stated that because coal dust exposure is related to chronic health effects, the exposure limit should be applied to dust concentrations averaged over a miner's lifetime. These commenters identified the measurement objective as being the dust concentration averaged over a long, but unspecified, term and argued that a single, full-shift measurement cannot accurately estimate this long-term average.

If the objective of section 202(b) were to estimate dust concentration averaged over a lifetime of exposure, then the Secretaries would agree that a single, full-shift sample, or even multiple samples collected during a single inspection, would not provide the basis for an accurate measurement. Section 202(b) of the Mine Act, however, does not mention long-term averaging, rather it explicitly requires that the average dust concentration be continuously maintained at or below the applicable standard during *each shift* (emphasis added). Furthermore, in *Consolidation Coal Company* versus *Secretary of Labor* 8 FMSHRC 890, (1986), aff'd 824 F.2d 1071, (D.C. Cir. 1987), the Commission found that each episode of a miner's overexposure to respirable dust significantly and substantially contributes to the health hazard of contracting chronic bronchitis or coal workers' pneumoconiosis, diseases of a fairly serious nature.

Some commenters submitted evidence that dust concentrations can vary significantly near the mining face, and that these variations may extend into areas where miners are located. That is, the average dust concentration over a full shift is not identical at every point within a miner's work area. These commenters submitted several bodies of data purporting to show significant discrepancies between simultaneous dust concentration measurements collected within a relatively small distance of one another. Several commenters maintained that the measurement objective is to accurately measure the average concentration within some arbitrary sphere about the head of the miner, and that multiple measurements within this sphere are necessary to obtain an accurate measurement. The Secretaries recognize that dust concentrations in the mine environment can vary from location to location, even within a small area near a miner. As mentioned earlier, the Mine Act does not specify the area that the measurement is supposed to represent, and the sampler unit may therefore be placed in any location reasonably calculated to prevent excessive exposure to respirable dust.

Several commenters suggested that the measurement objective should be a miner's ''true exposure'' or what the miner actually inhales. The Secretaries do not intend to use a single, full-shift measurement to estimate any miner's ''true exposure,'' because no sampling device can exactly duplicate the particle inhalation and deposition characteristics of a miner at any work rate (these characteristics change with work rate), let alone at the various work rates occurring over the course of a shift. Section 202(a) of the Mine Act, however, refers to ''the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed'' measured ''* * * at such locations * * *'' as prescribed by the Secretary of Labor. It is sufficient for the purposes of the Mine Act that the sampler unit accurately represent the amount of respirable dust at such locations only.

Accordingly, the Secretaries define the measurement objective to be the accurate determination of the average atmospheric conditions, or concentration of respirable dust, at a sampling location over a single shift.

*B. Accuracy Criterion*

A ''single shift measurement'' means the calculated dust concentration resulting from a valid single, full-shift sample of respirable coal mine dust. In reviewing the various issues raised by commenters, the Agencies found that the term ''accurately represent,'' as used

in section 202(f) in connection with a single shift measurement, was not defined in the Mine Act. Therefore, in their March 12, 1996 notice, the Secretaries proposed to apply an accuracy criterion developed and adopted by NIOSH in judging whether a single, full-shift measurement will ''accurately represent'' the full-shift atmospheric dust concentration. This criterion requires that measurements come within 25 percent of the corresponding true dust concentration at least 95 percent of the time [1].

One commenter opposed the application of the NIOSH Accuracy Criterion since it ignores environmental variability. For reasons explained above, the Secretaries have restricted the measurement objective to an individual shift and sampling location. Therefore, environmental variability beyond what occurs at the sampling location on a single shift is not relevant to assessing measurement accuracy.

For over 20 years, the NIOSH Accuracy Criterion has been used by NIOSH and others in the occupational health professions to validate sampling and analytical methods. This accuracy criterion was devised as a goal for the development and acceptance of sampling and analytical methods capable of generating reliable exposure data for contaminants at or near the Occupational Safety and Health Administration's (OSHA) permissible exposure limits.

OSHA has frequently employed a version of the NIOSH Accuracy Criterion when issuing new or revised single substance standards. For example, OSHA's benzene standard provides: ''[m]onitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of benzene''(29 CFR 1910.1028(e)(6)). Similar wording can be found in the OSHA standards for vinyl chloride (29 CFR 1917), arsenic (29 CFR 1918), lead (29 CFR 1925), 1,2-dibromo-3-chloropropane (29 CFR 1044), acrylonitrile (29 CFR 1045), ethylene oxide (29 CFR 1047), and formaldehyde (29 CFR 1048). Note that for vinyl chloride and acrylonitrile, the accuracy criteria for the method is ±35 percent at 95 percent confidence at the permissible exposure limit.

Some commenters contended that the NIOSH Accuracy Criterion does not conform with international standards recently adopted by the European Committee for Standardization (CEN) [2]. Contrary to these assertions, the NIOSH Accuracy Criterion not only conforms to the CEN criterion but is, in fact, more stringent. The CEN criterion requires that 95 percent of the measurements fall within ±30 percent of the true concentration, compared to ±25 percent under the NIOSH criterion. Consequently, any sampling and analytical method that meets the NIOSH Accuracy Criterion will also meet the CEN criterion.

The NIOSH Accuracy Criterion is relevant and widely recognized and accepted in the occupational health professions. Further, commenters proposed no alternative criteria for accuracy. Accordingly, for purposes of section 202(f) of the Mine Act, the Secretaries consider a single, full-shift measurement to ''accurately represent'' atmospheric conditions at the sampling location, if the sampling and analytical method used meets the NIOSH Accuracy Criterion.

Several commenters suggested that method accuracy should be determined under actual mining conditions rather than in a laboratory or in a controlled environment. Although the NIOSH Accuracy Criterion does not require field testing, it recognizes that field testing ''does provide further test of the method.'' However, in order to avoid confusing real differences in dust concentration with measurement errors when testing is done in the field, ''precautions may have to be taken to ensure that all samplers are exposed to the same concentrations'' [1]. Similarly, the CEN criterion for method accuracy specifies that ''testing of a procedure shall be carried out under laboratory conditions.'' To determine, so far as possible, the accuracy of its sampling and analytical method under actual mining conditions, MSHA conducted 22 field tests in an underground coal mine. To provide a valid basis for assessing accuracy, 16 sampler units were exposed to the same dust concentration during each field test using a specially designed portable chamber. The data from these field experiments were used by NIOSH in its ''direct approach'' to determining whether or not MSHA's method meets the long-established NIOSH Accuracy Criterion. (See section VII.E.2. of this notice).

In response to the March 12, 1996 notice, a commenter claimed that the supplementary information and analyses introduced into the public record by that notice addressed the precision of a single, full-shift measurement rather than its accuracy. According to this commenter, by focusing on precision, important sources of systematic error had been overlooked. The Secretaries agree with the comment that precision is not the same thing as accuracy. The accuracy of a measurement depends on both precision and bias [1,3]. Precision refers to consistency or repeatability of results, while bias refers to a systematic error that is present in every measurement. Since the NIOSH Accuracy Criterion requires that measurements consistently fall within a specified percentage of the true concentration, the criterion covers both precision and uncorrectable bias.

Since the amount of dust present on a filter capsule used by an MSHA inspector is measured by subtracting the pre-exposure weight from the post-exposure weight determined in the same laboratory, any bias in the weighing process attributable to the laboratory is mathematically canceled out by subtraction. Furthermore, as will be discussed later, a control (i.e., unexposed) filter capsule will be pre- and post-weighed along with the exposed filter capsules. The weight gain of the exposed capsule will be adjusted by the weight gain or loss of the control filter capsule. Therefore, any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules is also mathematically canceled out. Moreover, the concentration of respirable dust is effectively defined by section 202(e) of the Mine Act and the implementing regulations in 30 CFR parts 70, 71, and 90 to be whatever is measured with an approved sampler unit after multiplication by the MRE-equivalent conversion factor prescribed by the Secretary of Labor. Therefore, the Secretaries have concluded that the improved sampling and analytical method is statistically unbiased. This means that such measurements contain no systematic error. It should also be noted that since any systematic error would be present in all measurements, measurement bias cannot be reduced by making multiple measurements. Other comments regarding measurement bias are addressed in Appendix A.

For unbiased sampling and analytical methods, a standard statistic—called the *coefficient of variation* (CV)—is used to determine if the method meets the NIOSH Accuracy Criterion. The CV, which is expressed as either a fraction (e.g., 0.05) or a percentage (e.g., 5 percent), quantifies measurement accuracy for an unbiased method. An unbiased method meets the NIOSH Accuracy Criterion if the ''true'' CV is no more than 0.128 (12.8 percent). However, since it is not possible to determine the true CV with 100-percent confidence, the NIOSH Accuracy Criterion contains the additional requirement that there be 95-percent confidence that measurements by the method will come within 25 percent of

the true concentration 95 percent of the time. Stated in mathematically equivalent terms, an unbiased method meets the NIOSH Accuracy Criterion if there is 95-percent confidence that the true CV is less than or equal to 0.128 (12.8 percent).

*C. Validity of the Sampling Process*

A single, full-shift measurement of respirable coal mine dust is obtained with an approved sampler unit, which is either worn or carried by the miner directly to and from the sampling location and is operated portal to portal. The unit remains operational during the entire shift or for eight hours, whichever time is less. A portable, battery-powered pump draws dust-laden mine air at a flow rate of 2 liters per minute (L/min) through a 10-mm nylon cyclone, a particle-size selector that removes non-respirable particles from the airstream. Non-respirable particles are particles that tend to be removed from the airstream by the nose and upper respiratory airways. These particles fall to the bottom of the cyclone body called the ''grit pot,'' while smaller, respirable particles (of the size that would normally enter into the lungs) pass through the cyclone, directly into the inlet of the filter cassette. This airstream is directed through the pre-weighed filter leaving the particles deposited on the filter surface. The collection filter is enclosed in an aluminum capsule to prevent leakage of sample air around the filter and the loss of any dust dislodged due to impact. The filter capsule is sealed in a protective plastic enclosure, called a cassette, to prevent contamination. After completion of sampling, the filter cassette is sent to MSHA's Respirable Dust Processing Laboratory in Pittsburgh, Pennsylvania, where it is weighed again to determine the weight gain in milligrams, which is the amount of dust collected on the filter. The concentration of respirable dust, expressed as milligrams per cubic meter ($mg/m^3$) of air, is determined by dividing the weight gain by the volume of mine air passing through the filter and then multiplying this quantity by a conversion factor (discussed below in Appendix A) prescribed by the Secretary.

Some comments generally addressed the quality and reliability of the equipment used for sampling. Specific concerns were expressed about the quality of filter cassettes and the reliability, due to their age and condition, of sampling pumps used by MSHA inspectors. Other commenters questioned the effect of sampling and work practices on the validity of a sample.

The validity of the sampling process is an important aspect of maintaining accurate measurements. Since passage of the Coal Act, there has been an ongoing effort by MSHA and NIOSH to improve the accuracy and reliability of the entire sampling process. In 1980, MSHA issued new regulations revising sampling, maintenance and calibration procedures in 30 CFR parts 70, 71, and 90. These regulatory provisions were designed to minimize human and mechanical error and ensure that samples collected with approved sampler units in the prescribed manner would accurately represent the full-shift, average atmospheric dust concentration at the location of the sampler unit. These provisions require: (1) Certification of competence of all individuals involved in the sampling process and in maintaining the sampling equipment; (2) calibration of each sampler unit at least every 200 hours; (3) examination, testing, and maintenance of units before each sampling shift to ensure that the units are in proper working order; and (4) checking of sampler units during sampling to ensure that they are operating properly and at the proper flow rate. In addition, significant changes, such as robotic weighing using electronic balances were made in 1984, 1994, and 1995 that improved the reliability of sample weighings at MSHA's Respirable Dust Processing Laboratory. These changes are discussed below in section C.3.

All of these efforts improved the accuracy and reliability of the sampling process since the time of the 1971/1972 proposed and final findings. A discussion follows concerning the three elements which constitute the sampling process: sampler unit performance, collection procedures, and sample processing.

1. Sampler Unit Performance

In accordance with the provisions of section 202(e) of the Mine Act, NIOSH administers a comprehensive certification process under 30 CFR part 74 to approve dust sampler units for use in coal mines. To be approved for use, a sampler unit must meet stringent technical and performance requirements governing the quantity of respirable dust collected and flow rate consistency over an 8-hour period when operated at the prescribed flow rate. NIOSH also conducts annual performance audits of approved sampler units purchased on the open market to determine if the units are being manufactured in accordance with the specifications upon which the approval was issued.

The system of technical and quality assurance checks currently in place is designed to prevent a defective sampler unit from being manufactured and made commercially available to the mining industry or to MSHA. In the event these checks identify a potential problem with the manufacturing process, the system requires immediate action to identify and correct the problem.

In 1992, NIOSH approved the use of new tamper-resistant filter cassettes with features that enhanced the integrity of the sample collected. A backflush valve was incorporated into the outlet of the cassette, preventing reverse airflow through the filter cassette, and an internal flow diverter was added to the filter capsule, reducing the possibility of dust dislodged from the filter surface falling out of the capsule inlet.

Several commenters questioned the quality of the filter cassettes used in the sampling program, expressing concern about whether the cassettes always meet MSHA specifications. These concerns primarily involve filter-to-foil distance and floppiness of the filters, which are manufacturing characteristics not related to part 74 performance requirements. The Secretaries believe that such characteristics have no effect on the accuracy of a single, full-shift measurement because, unlike the part 74 requirements, they would not affect the amount of dust deposition.

Commenters also questioned the condition of sampling pumps used by MSHA inspectors, stating that many of the pumps are 10 to 20 years old and are not maintained as well as they could be. They claimed that the age and condition of these pumps call into question not only whether the sampling equipment could meet part 74 requirements if tested, but also the accuracy of the measurement.

This concern is unwarranted. In 1995, MSHA replaced all pumps in use by inspectors with new constant-flow pumps that incorporate the latest technology in pump design. These pumps provide more consistent flow throughout the sampling period. In addition to using new pumps, MSHA inspectors are required to make a minimum of two flow rate checks to ensure that the sampler unit is operating properly. The sample is voided if the proper flow rate was not being maintained during the final check at the conclusion of the sampling shift. Units found not meeting the requirements of part 74 are immediately repaired, adjusted, or removed from service. Nevertheless, MSHA recognizes that as these pumps age, deterioration of the performance of older pumps could become a concern. However, there is no

evidence that the age of the equipment affects its operational performance if the equipment is maintained as prescribed by 30 CFR parts 70, 71, and 90.

Some commenters suggested that the accuracy of a dust sample may be compromised when a miner is operating equipment, due to vibration from the machinery. The potential effect of vibration on the accuracy of a respirable dust measurement was recognized by NIOSH in 1981. An investigation, supported by NIOSH, was conducted by the Los Alamos National Laboratory which found that vibration has an insignificant effect on sampler performance [4].

2. Sample Collection Procedures

MSHA regulations at 30 CFR parts 70, 71, and 90 prescribe the manner in which mine operators are to take respirable dust samples. The collection procedures are designed to ensure that the samples accurately represent the amount of respirable dust in the mine atmosphere to which miners are exposed on the shift sampled. Samples taken in accordance with these procedures are considered to be valid.

Several commenters questioned the effects of sampling and work practices on the validity of a sample. Instances were cited where the sampling unit was accidentally dropped, with the potential for the sample to become contaminated. Commenters also pointed out that work activities requiring crawling, duck walking, bending, or kneeling could cause the sampling hose to snag. Such activities could also cause the sampling head assembly to be impacted or torn off a person's garment, possibly contaminating the sample. These commenters stated that sampler units are sometimes treated harshly while being worn by miners, mishandled when being transferred from one miner to another, or handled casually at the end of a work shift.

These commenters maintained that it is impossible for MSHA inspectors or mine operators to continuously observe collection of a sample in order to ensure its validity, and that, for this reason, the reliability and accuracy of the sampling equipment, when used under actual mining conditions, is not the same as when tested and certified in a laboratory. Averaging multiple samples would, according to these commenters, provide some ''leeway'' in the system, by reducing the impact of an aberrant sample.

While MSHA and NIOSH agree that it is not possible to continuously observe the collection of each sample, MSHA inspectors are normally in the general vicinity of the sampling location, and therefore have knowledge of the specific conditions under which samples are taken. In addition, MSHA inspectors are instructed to ask miners wearing the sampler units whether anything that could affect the validity of the sample had occurred during the shift.

Other commenters expressed concern that, if special dust control measures are in effect during sampling, a single, full-shift measurement may fail to represent atmospheric conditions during shifts when samples are not collected. The Secretaries believe that this concern is beyond the scope of this notice, which, as described in the discussion of measurement objective, deals solely with the accuracy of a measurement in representing atmospheric conditions on the shift being sampled. One commenter recommended that MSHA, NIOSH, or the Bureau of Mines (now a part of NIOSH) should evaluate the need for standardizing the MSHA respirable dust sampling procedures. In fact, the procedures for respirable dust sampling are already standardized under the revised 1980 MSHA regulations codified at 30 CFR parts 70, 71 and 90.

MSHA inspectors will also begin using control filter capsules to eliminate any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules. A control filter capsule is an unexposed filter capsule that was pre-weighed on the same day as the filter capsules used during a sampling inspection. These control filter capsules will be carried by the inspector, but will remain plugged and not be exposed to the mine environment.

3. Sample Processing

Sample processing consists of weighing the filter capsules, recording the weight gains, and examining certain samples in order to verify their validity. Sample processing also includes electronic transmission of the results to MSHA's computer center where dust concentrations are computed. The results are then distributed to MSHA enforcement personnel and to mine operators.

(a) *Weighing and recording procedures.* One commenter cited a personal experience in which anomalies were noted in the pre-exposed weights recorded by the dust cassette manufacturer. The commenter was concerned that such anomalies indicated poor quality control in the manufacturer's weighing process, implying that this would cause a significant number of single, full-shift measurements to be inaccurate.

The procedures and analytical equipment used by MSHA to process respirable coal mine dust samples have improved since 1970. From 1970 to 1984, samples were manually weighed using semimicro balances. In 1984, the process was automated with a state-of-the-art robotic system and electronic balances, which increased the precision of sample weight determinations. Weighing precision was further improved in 1994, when both the robotic system and balance were upgraded.

The full benefit of the 1994 improvements of the weighing system for inspector samples was, however, not fully attained until mid-1995, when MSHA implemented two modifications to its procedures for processing inspector samples. One modification involved measuring both the pre- and post-exposed weights to the nearest microgram (0.001 mg) on a balance calibrated using the established procedure within MSHA's laboratory. Prior to mid-1995, filter capsules had been weighed in the manufacturer's laboratory before sampling, and then in MSHA's laboratory after sampling. MSHA is now pre-weighing all such filter capsules in its own laboratory, which will significantly reduce the potential for anomalous pre-exposed weights of filter capsules used by inspectors. To maintain the integrity of these pre-exposed weights, eight percent of all capsules are systematically weighed a second time. If a significant deviation is found, the balance is recalibrated and all filter capsules with questionable weights are reweighed.

The other modification was to discontinue the practice of truncating the recorded weights used in calculating dust concentration. This means that MSHA no longer ignores digits representing hundredths and thousandths of a milligram when processing inspector samples. These modifications improved the overall accuracy of the measurement process.

To eliminate the potential for any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules, MSHA will use control filter capsules in its enforcement program. Any change in weight of the control filter capsule will be subtracted from the change in weight of the exposed filter capsule.

(b) *Sample validity checks.* All respirable dust samples collected and submitted as required by 30 CFR parts 70, 71, and 90 are considered valid unless a questionable appearance of the filter capsule or other special circumstances are noted that would

cause MSHA to examine the sample further. Several commenters expressed concern about the potential contamination of samples with ''oversize particles.'' Such contamination, according to one commenter, can result in aberrational weight gains. These commenters noted that current procedures do not systematically ensure that samples collected by MSHA contain no oversize particles. It was recommended that MSHA analyze, for the presence of oversize particles, any dust sample that exceeds the applicable dust standard. Also suggested for such an analysis was any sample with a weight gain significantly different from other samples taken in the same area.

Standard laboratory procedures, involving visual, and microscopic examination as necessary, are used to verify the validity of samples. Samples weighing 1.4 milligrams (mg) or more are examined visually and microscopically, as necessary, for abnormalities such as the presence of large dust particles (which can occur from agglomeration of smaller particles), abnormal discoloration, abnormal dust deposition pattern on the filter, or any apparent contamination by materials other than respirable coal mine dust. Also examined are samples weighing 0.1 mg or less for insufficient dust particle count. Similar checks are also performed in direct response to specific inspector or operator concerns noted on the dust data card to which each sample is attached.

The commenters' concerns about the contamination of samples with oversize particles are based on the assumption that all oversize particles, defined as dust particles greater than 10 micrometers in size, are not respirable and therefore should be totally excluded from any sample taken with an approved sampler unit. In fact, it has long been known that particles greater then 10 micrometers in size can be inhaled, and that some of these particles can reach the alveoli of the lungs [5]. According to the British National Coal Board, ''particles as large as 20 microns (i.e. micrometers) mean diameter may be deposited, although most ''lung dust'' lies in the range below 10 microns diameter'' [6]. Furthermore, it is known that, due to the irregular shapes of dust particles, the respirable dust collected by the MRE instrument (the dust sampler used by the British Medical Research Establishment in the epidemiological studies on which the U.S. coal dust standard was based) may include some dust particles as large as 20 micrometers [6]. Moreover, MSHA studies have shown that nearly all samples taken with approved sampler units, even when operated in the prescribed manner, contain some oversize particles [7]. Since section 202(e) of the Mine Act defines concentration of respirable dust to be that measured by an approved sampler unit, and because the approved sampler unit will collect some oversize particles, the Secretaries do not consider a sample to be ''contaminated'' because it contains some oversize particles.

The Secretaries recognize that there are occasions when oversize particles can properly be considered a contaminant. For example, an excessive number of such particles could be introduced into the filter capsule if the sampling head assembly is accidentally or deliberately turned upside down or ''dumped'' (possibly causing some of the contents of the cyclone grit pot to be drawn into the filter capsule), if the pump malfunctions, or if the entire sampler unit is dropped. When MSHA has reason to believe that such contamination has occurred, the suspect sample is examined to verify its validity.

Contrary to the assertions of some commenters, checking for oversize particles is not standard industrial hygiene practice. Nevertheless, MSHA checks any dust sample suspected of containing an excessive number of oversize particles. MSHA's laboratory procedures require any sample exhibiting an excessive weight gain (over 6 mg) or showing evidence of being ''dumped'' to be examined for the presence of an excessive number of oversize particles. Samples identified by an inspector or mine operator as possibly contaminated are also examined. If this examination indicates that the sample contains an excessive number of oversize particles according to MSHA's established criteria, then that sample is considered to be invalid, and is voided and not used. In fiscal year 1996, only 83 samples or 0.4 percent of the 20,331 inspector samples processed were found to contain an excessive number of oversize particles and thus were not used.

While rough handling of the sampler unit or an accidental mishap could conceivably cause a sample weighing less than 6 mg to become contaminated, as claimed by some commenters, studies show that short-term accidental inclinations of the cyclone will not affect respirable mass measurements made with currently approved sampler units [8]. Sampler units currently used are built to withstand the rigors of the mine environment, and are therefore less susceptible to contamination than suggested by some commenters. In any event, the Secretaries believe that the validity checks currently in place, as discussed above, will detect such samples.

*D. Measurement Uncertainty and Dust Concentration Variability*

Overall variability in measurements collected on different shifts and sampling locations results from the combination of errors associated with the measurement of a particular dust concentration and variability in dust concentration. Variability in dust concentration refers to the differing atmospheric conditions experienced on different shifts or at different sampling locations. Measurement uncertainty, on the other hand, refers to the differing measurement results that could arise, at a given sampling location on a given shift, because of potential sampling and analytical errors.

Numerous commenters identified sources of measurement uncertainty and dust concentration variability that they believed should be considered when determining whether or not a measurement accurately represents such atmospheric conditions. Because the measurement objective is to accurately represent the average dust concentration at the sampling location over a single shift, it does not take into consideration dust concentration variability between shifts or locations. Sources of dust concentration variability will not be considered by the Secretaries in determining whether a measurement is accurate. Consequently, the Secretaries have concluded that the only sources of variability relevant to establishing accuracy of a single, full-shift measurement for purposes of section 202(f) of the Mine Act are those related to sampling and analytical error.

1. Sources of Measurement Uncertainty

Filter capsules are weighed prior to sampling. After a single, full-shift sample is collected, the filter capsule is weighed a second time, and the weight gain (g) is obtained by subtracting the pre-exposure weight from the post-exposure weight, which will then be adjusted for the weight gain or loss observed in the control filter capsule. A measurement (x) of the atmospheric condition sampled is then calculated by Equation 1:

$$x = \frac{1.38 \cdot g}{v} \qquad (1)$$

where: x is the single, full-shift dust concentration measurement (mg/$m^3$);

1.38 is a constant MRE-equivalent conversion factor;

g is the observed weight gain (mg) after adjustment for the control filter capsule;

v is the estimated total volume of air pumped through the filter during a typical full shift.

The Secretaries recognize that random variability, inherent in any measurement process, may cause x to deviate either above or below the true dust concentration. The difference between x and the true dust concentration is the measurement error, which may be either positive or negative. Measurement uncertainty arises from a combination of potential errors in the process of collecting a sample and potential errors in the process of analyzing the sample. These potential errors introduce a degree of uncertainty when x is used to represent the true dust concentration.

The statistical measure used by the Secretaries to quantify uncertainty in a single, full-shift measurement is the total *sampling and analytical coefficient of variation,* or $CV_{total}$. $CV_{total}$ quantifies the magnitude of probable sampling and analytical errors and is expressed as either a fraction (e.g., 0.05) or as a percentage (e.g., 5 percent) of the true concentration. For example, if a single, full-shift measurement (x) is collected in a mine atmosphere with true dust concentration equal to 1.5 mg/m $^3$, and the standard deviation of potential sampling and analytical errors associated with x is equal to 0.075 mg/m $^3$, the uncertainty associated with x would be expressed by the ratio of the standard deviation to the true dust concentration: $CV_{total} = 0.075/1.5 = 5$ percent.

Based on a review of the scientific literature, the Secretaries in their March 12, 1996 notice, identified three sources of uncertainty in a single, full-shift measurement, which together make up $CV_{total}$:

(1) $CV_{weight}$—variability attributable to weighing errors or handling associated with exposed and control filter capsules. This covers any variability in the process of weighing the exposed or control filter capsules prior to sampling (pre-weighing), assembling the exposed and control filter cassettes, transporting the filter cassettes to and from the mine, and weighing the exposed and control filter capsules after sampling (post-weighing).

(2) $CV_{pump}$—variability in the total volume of air pumped through the filter capsule. This covers variability associated with calibration of the pump rotameter,[2] variability in adjustment of the flow rate at the beginning of the shift, and variation in the flow rate during sampling. It should be noted that variation in flow rate during sampling was identified as a separate component of variability in MSHA's February 18, 1994, notice. Here, it is included within $CV_{pump}$.

(3) $CV_{sampler}$—variability in the fraction of dust trapped on the filter. This is attributable to physical differences among cyclones. This component was introduced in the material submitted into the record in September 1994.

These three components of measurement uncertainty can be combined to form an indirect estimate of $CV_{total}$ by means of the standard propagation of errors formula:

$$CV_{total} = \sqrt{CV_{weight}^2 + CV_{pump}^2 + CV_{sampler}^2} \qquad (2)$$

These three components are discussed in greater detail, along with responses to specific comments, in Appendix B.

2. Sources of Dust Concentration Variability

Numerous commenters also raised issues related to sources of dust concentration variability. Some of these commenters maintain that the Secretaries should include in $CV_{total}$ additional components representing the effects of shift-to-shift variability and variability related to location (spatial variability). These comments reflect a misunderstanding of the measurement objective as intended by the Mine Act (see section VII.A. of this notice).

Exposure variability due to job, location, shift, production level, effectiveness of engineering controls, and work practices will be different from mine to mine, and is under the control of the mine operator. The sampler unit is not intended to account for these factors.

(a) *Spatial variability.* Several commenters stated that $CV_{total}$ should account for spatial variability, or the differences in concentration related to location. The Secretaries agree that dust concentrations vary between locations in a coal mine, even within a relatively small area. However, real variations in concentration between locations, while sometimes substantial, do not contribute to measurement error. As stated earlier, the measurement objective is to accurately measure average atmospheric conditions, or concentration of respirable dust, at a sampling location over a single shift.

(b) *Shift-to-shift variability.* Several commenters stated that $CV_{total}$ should take into account the differences or variations in dust concentration that occur shift to shift. Although the Secretaries agree that dust concentrations vary from shift to shift, the measurement objective is to measure average atmospheric conditions on the specific shift sampled. This result is consistent with the Mine Act, which requires that concentrations of respirable mine dust be maintained at or below the applicable standard during each shift.

3. Other Factors Considered

(a) *Proportion of oversize particles.* Several commenters expressed concern that respirable dust cyclones are handled in a rough manner in normal use and occasionally turned upside down. According to one commenter, this type of handling would cause more large particles to be deposited on the filter in the mine environment than when used in the laboratory. This commenter knew of no data that could be used to evaluate the error associated with such occurrences and recommended that a study be commissioned to measure the proportion of non-respirable particles on the filters after they are weighed to MSHA standards.

After considering this recommendation, the Secretaries have concluded that the available evidence shows that short-term inclinations of the cyclone, as might frequently occur during sampling, will not affect respirable dust measurements made with approved sampler units [8]. The weight of the sampler head assembly makes it extremely unlikely that a

[2] The rotameter consists of a weight or ''float'' which is free to move up and down within a vertical tapered tube which is larger at the top than the bottom. Air being drawn through the filter cassette passes through the rotameter, suspending the ''float'' within the tube. The pump is ''calibrated'' by drawing air through a calibration device (usually what is known as a bubble meter)at the desired flow rate and marking the position of the float on the tube. The processes of marking the position on the tube (laboratory calibration) and adjusting the pump speed in the field so that the float is positioned at the mark are both subject to error.

sampler unit could be turned upside down in normal use. Furthermore, with a field study of the type recommended, variability in the field measurements due to normal handling would be confounded with variability due to real differences in atmospheric conditions. Therefore, the Secretaries believe that such a study would not be useful in establishing variability in measurements due to differences in handling of the sampler unit.

(b) *Anomalous events.* Several commenters asserted that unpredictable, infrequent events, such as a ''face blowout'' on a longwall (a violent expulsion of coal together with large quantities of coal dust and/or methane gas) or high winds at a surface mine, can cause rapid loading of a filter capsule and thereby distort a measurement to show an excessive dust concentration based on a single, full-shift sample when, they argue, the dust standard had not been exceeded. In fact, if such an occurrence were to cause a measurement above the applicable standard, the dust standard would in fact be violated. No evidence was presented to demonstrate that short-term high exposures can overload a dust sampling filter or cause the sampling device to malfunction. Nor was evidence presented to demonstrate that miners are not also exposed to the same high dust concentrations as the sampler unit when such events occur. The Secretaries conclude that such events are results of the dynamic and ever-changing mine environment—an environment to which the miner is exposed. The sampler unit is designed to measure the atmospheric condition at a specific sampling location over a full shift. If such events occur, the sampler unit will accurately record the atmospheric condition to which it is exposed.

(c) *Conversion factor used in the dust concentration calculation.* Several commenters questioned the 1.38 MRE-conversion factor used in Equation 1. This factor is used to convert a measurement obtained with the type of dust sampler unit currently approved for use in coal mines to an equivalent concentration as measured with an MRE gravimetric dust sampler. The term ''MRE instrument'' is defined in 30 CFR § 70.2(I). The conversion factor is necessary because the coal mine dust standard was derived from British data collected with an MRE instrument, which collects a larger fraction of coal mine dust than does the approved dust sampling unit [9]. The 1.38 constant has been established by the Secretaries as applying to the currently approved dust sampler unit described in 30 CFR part 74.

Some commenters contended that variability involved in the data analysis used in establishing the conversion factor should be taken into account in determining $CV_{total}$. This suggestion demonstrates a misunderstanding of the difference between measurement imprecision and measurement bias. The 1.38 factor applies to *every* sampler unit currently approved under part 74. Since the same conversion factor is applied to every measurement, any error in the value used would cause a measurement bias but would have no effect on measurement imprecision. Since Congress defined respirable dust in section 202(e) of the Mine Act as whatever is collected by a currently approved sampler unit, a measurement incorporating the 1.38 factor is unbiased by definition. Further discussion is provided in Appendix A on why use of the 1.38 factor does not introduce a bias. Appendix A also addresses comments relating to other aspects of the 1.38 conversion factor; comments regarding the fact that MSHA's sampler unit does not conform to other definitions of respirable dust; and questions concerning the effect of static charge on sampler unit performance.

(d) *Reduced dust standards.* One commenter pointed out that in estimating $CV_{total}$, MSHA and NIOSH did not take into account any potential errors associated with silica analysis. The commenter argued that since silica analysis is used to establish reduced dust standards, MSHA and NIOSH had failed to demonstrate ''* * * accuracy for all samples 'across the range of possible reduced dust standards.' ''

This commenter confuses the accuracy of a respirable dust concentration measurement with the accuracy of the procedure used to establish a reduced dust standard. MSHA has a separate program in which silica analysis is used to set the applicable respirable coal mine dust standard, in accordance with section 205 of the Mine Act, when the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz. As shown by Equation 1, no silica analysis is used in a single, full-shift measurement of the respirable dust concentration. Therefore, the Secretaries do not agree with the comment that $CV_{total}$ should include a component representing potential errors in silica analysis.

(e) *Dusty clothing.* Several commenters pointed out that local factors such as dusty clothing could cause concentrations in the immediate vicinity of the sampler unit to be unrepresentative of a larger area. Dust from a miner's clothing nevertheless represents a potential hazard to the miner. No evidence was presented to demonstrate that miners are not also exposed to dust originating from dusty clothing.

*E. Accuracy of a Single, Full-Shift Measurement*

1. Quantification of Measurement Uncertainty

Several commenters argued that MSHA underestimated $CV_{total}$ in its February 18, 1994 notice and suggested alternative estimates ranging from 16 to 50 percent. These commenters cited several published studies and submitted five sets of data in support of these higher estimates. Statistical analyses of the data were also submitted.

MSHA and NIOSH reviewed all of the studies referenced by the commenters. The review showed that all of the estimates of measurement variability were from studies carried out prior to improvements mandated by the 1980 MSHA revisions to dust sampling regulations, discussed earlier in ''Validity of the Sampling Process.'' For example, the General Accounting Office (GAO)[3] and the National Bureau of Standards (NBS, now the National Institute of Standards and Technology) studies were conducted in 1975. The National Academy of Sciences report, which analyzed the same data as the NBS and GAO reports, was issued in 1980. The review further showed that the measurement variability quantified in these studies included effects of spatial variability—a component of variability the Secretaries deliberately exclude when determining the accuracy of a sampling and analytical method as discussed in section D.2.(a). Additionally, since past studies frequently relied on combining estimates of variability components obtained from different bodies of data, some of them also suffered from methodological problems related to combining individual sources of uncertainty. For example, in 1984, a NIOSH study identified several conceptual errors in earlier studies that had led to double-or even triple-counting of some variability components [10].

Although all the data and analyses submitted by commenters included effects of spatial variability, one of these data sets, consisting of paired sample results, contained sufficient information to indicate that weighing imprecision

[3] Many of the recommendations in the GAO report were later adopted and implemented by MSHA.

was less than what MSHA had assumed in its February 18, 1994 notice. However, without an independent estimate of spatial variability applicable to these samples, it is not mathematically possible to utilize this data set to estimate variability attributable to the sampler unit or the volume of air sampled. A second data set consisted only of differences in dust concentration between paired samples, making it impossible to use it even for evaluating weighing imprecision. The remaining three data sets included effects of shift-to-shift variability, which, like spatial variability, is not relevant to the measurement objective. Therefore, none of these data could be used to estimate overall measurement imprecision. Further details are provided in Appendix C.

One of the commenters particularly questioned the value MSHA used in its February 18, 1994 notice to represent variability in initially setting the pump flow rate. In response to this commenter's suggestion, MSHA conducted a study to verify the magnitude of this variability component. This study simulated flow rate adjustment under realistic operating conditions by including a number of persons checking and adjusting initial flow rate under various working situations [11]. Results showed the coefficient of variation associated with the initial flow rate adjustment to be 3±0.5 percent, which is less than the 5-percent value used by MSHA in the February 1994 notice. In addition, based on a review of published results, the Secretaries have concluded that the component of uncertainty associated with the combined effects of variability in flow rate during sampling and potential errors in calibration is actually less than 3 percent. As explained in Appendix B, these two sources of uncertainty can be combined to estimate $CV_{pump}$. After reviewing the available data and the comments submitted, the Secretaries have concluded that the best estimate of $CV_{pump}$ is 4.2 percent. Additional details regarding $CV_{pump}$, along with the Secretaries' responses to comments, are presented in Appendix B.

Intersampler variability, represented by $CV_{sampler}$, accounts for uncertainty due to physical differences from sampler to sampler. Most of the commenters ignored this source of uncertainty. As explained in Appendix B, the Secretaries have adopted a 5-percent estimate of $CV_{sampler}$.

To address commenters' concerns that the Agencies had underestimated $CV_{total}$, MSHA conducted a field study to directly estimate the overall measurement precision attainable when dust samples are collected with currently approved sampler units and analyzed using state-of-the-art analytical techniques. The study involved simultaneous field measurements of the same coal mine dust cloud using sampling pumps incorporating constant flow technology. Using a specially designed portable dust chamber, 22 tests were conducted at various locations in an underground coal mine. Each test consisted of collecting 16 dust samples simultaneously and at the same location. No adjustments in the flow rate were made beyond what would routinely have been done by an MSHA inspector.

Prior to the field study, two modifications to MSHA's sampling and analytical method had been considered by MSHA and NIOSH: (1) Measuring both the pre-and post-exposure weights to the nearest microgram (µg) on a balance calibrated using the established procedure within MSHA's Respirable Dust Processing Laboratory; and (2) discontinuing the practice of truncating the recorded weights used in calculating the dust concentration. These modifications were incorporated into the design of the field study.

One commenter characterized the field study as being ''woefully incomplete'' because it was conducted ''in a tightly controlled environment * * * not subject to normal environmental variation.'' While it is true that the samples within each test were not subject to normal environmental variability, this was because the experiment was deliberately designed to avoid confusing spatial variability in dust concentration with measurement error. However, pumps were handled and flow rates were checked in the same manner as during routine sampling. Furthermore, the sampler units were disassembled and reassembled in the normal manner to remove and replace dust cassettes.

Commenters also questioned the value that MSHA used in the February 1994 notice to represent uncertainty due to potential weighing errors. In September 1994, MSHA submitted into the record an analysis based on replicated weighings for 300 unexposed filter capsules, each of which was weighed once by the cassette manufacturer and twice in MSHA's laboratory [12]. An estimate of weighing imprecision derived from this analysis was used by NIOSH in its September 20, 1995 assessment of MSHA's sampling and analytical procedure (discussed in more detail later).

In the March 12, 1996 joint notice, MSHA described the results of an investigation into repeated weighings of the same capsules made over a 218-day period using MSHA's automatic weighing system. It was noted that after approximately 30 days, filter capsules left exposed and unprotected gained a small amount of weight—an average of 0.8 µg (micrograms) per day. Neither NIOSH nor MSHA considered this a problem, since all dust samples are analyzed within 24 hours of receipt and are not left exposed and unprotected. However, more recent data collected to quantify weighing variability between the MSA and MSHA laboratories showed that filter capsules tend to gain a small amount of weight even when stored in plastic cassettes [13]. To check this result, 75 unexposed filter cassettes that had been distributed to MSHA's district offices were recalled and the filter capsules were reweighed. On average, the weight gain was about 40 µg over a time period of roughly 150 days. Statistical analyses of these data performed by MSHA and NIOSH confirmed the previous result [13,14]. While the cause has not been established, it is hypothesized that at least some of the observed weight gain may be the result of outgassing from the plastic cassette onto the filter capsule. If uncorrected, any systematic change in weight not due to coal mine dust would introduce a bias in dust concentration measurements.

One commenter had previously stated that the Secretaries were addressing only precision, thereby implying that potential biases were being ignored. To eliminate the potential for any bias due to a spurious gain or loss of filter capsule weight, MSHA will use control filter capsules in its enforcement program. Any change in weight observed for the control filter capsule will be subtracted from the measured change in weight of the exposed filter capsule. Each control filter capsule will be pre-weighed with the other filter capsules, will be stored and transported with the other capsules, and will be on the inspector's person during the day of sampling. This modification to MSHA's inspector sampling and analytical procedure will assure an unbiased estimate of the true weight gain [14].

2. Verification of Method Accuracy

With its field study, MSHA exceeded the usual requirements for determining the accuracy of a sampling and analytical method, as described by NIOSH [1] and the European Community [2]. Both of these require only a laboratory determination of method accuracy. NIOSH's independent analysis of the study data determined, with 95-percent confidence, that the

true $CV_{total}$ for MSHA's sampling and analytical method is less than the target maximum value of 12.8 percent for concentrations ranging from 0.2 mg/m$^3$ to greater than 2 mg/m$^3$ [3]. In other words, NIOSH demonstrated that, with two recommended modifications, MSHA's sampling and analytical method for collecting and processing single, full-shift samples would meet the NIOSH Accuracy Criterion at dust concentrations greater than or equal to 0.2 mg/m$^3$.

NIOSH also applied an indirect approach for assessing the accuracy of MSHA's sampling and analytical method. The indirect approach involved combining independently derived estimates, previously placed into the public record, of intra-laboratory weighing imprecision, pump-related variability, and variability associated with physical differences between individual sampler units. This indirect approach also indicated that MSHA's sampling and analytical method meets the NIOSH Accuracy Criterion at concentrations greater than or equal to 0.2 mg/m$^3$, thereby corroborating the analysis of MSHA's field data.

These NIOSH analyses predate MSHA's more recent data indicating a correctable weight gain bias (discussed above). As explained in Appendices A and B, the use of control filter capsules will eliminate this bias but also affect the precision of a single, full-shift measurement. Consequently, NIOSH reassessed the accuracy of MSHA's sampling and analytical method, taking into account the effect of using a control filter capsule on the measurement process [14]. After accounting for the effects of control filter capsules on both bias and precision, NIOSH concluded, based on both its direct and indirect approaches, that a single, full-shift measurement will meet the NIOSH Accuracy Criterion at dust concentrations greater than or equal to 0.3 mg/m$^3$.

One commenter claimed that the Secretaries ''have not addressed the 'accuracy' of a single sample collected from an environment where the concentration is unknown''. The purpose of any measurement process is to produce an estimate of an unknown quantity. Since the Secretaries have concluded that MSHA's sampling and analytical method for inspectors meets the NIOSH Accuracy Criterion for true concentrations ranging from 0.3 mg/m$^3$ to greater than 2 mg/m$^3$, it is possible to calculate the range of measurements for which the Accuracy Criterion applies. Since $CV_{total}$ increases at the lower concentrations, it is important to determine the lowest measurement at which the NIOSH Accuracy Criterion is met. If the true concentration exactly equaled the lowest concentration at which MSHA's sampling and analytical method meets the Accuracy Criterion (i.e., 0.3 mg/m$^3$), no more than 5% of single, full-shift measurements would be expected to exceed 0.36 mg/m$^3$ [14]. Conversely, if a measurement equals or exceeds 0.36 mg/m$^3$, it can be inferred, with at least 95% confidence, that the true dust concentration equals or exceeds 0.3 mg/m$^3$ [14]. Consequently, the Secretaries conclude that MSHA's improved sampling and analytical method satisfies the NIOSH Accuracy Criterion whenever a single, full-shift measurement is at or above 0.36 mg/m$^3$.

As a result of the prior analyses, MSHA's existing inspector sample processing procedures were changed to reflect the modifications that were incorporated into MSHA's field study. MSHA is now pre- and post-weighing inspector samples in the same laboratory, and reporting the pre- and post-exposure weights of inspector samples to the nearest microgram (μg). As a result of NIOSH's latest analysis, MSHA will now require its inspectors to use control filter capsules during sampling. In addition, MSHA is now using only constant-flow control pumps in the inspector sampling program. MSHA believes that exclusive use of constant-flow pumps, as in the field study, further enhances the quality of the Agency's sampling program.

The Secretaries recognize that future technological improvements in MSHA's sampling and analytical method may reduce $CV_{total}$ below its current value. Also, as additional data are accumulated, updated estimates of $CV_{total}$ may become available. However, so long as the method remains unbiased and $CV_{total}$ remains below 12.8 percent, at a 95-percent confidence level, the sampling and analytical method will continue to meet the NIOSH Accuracy Criterion, and the present finding will continue to be valid.

## VIII. Finding

The Secretaries have concluded that sufficient data exist for determining the uncertainty associated with a single, full-shift measurement; rigorous requirements are in place, as specified by 30 CFR parts 70, 71, and 90, to ensure the validity of a respirable coal mine dust sample; and valid statistical techniques were used to determine that MSHA's improved dust sampling and analytical method meets the NIOSH Accuracy Criterion. For these reasons the Secretaries find that a single, full-shift measurement at or above 0.36 mg/m$^3$ will accurately represent atmospheric conditions to which a miner is exposed during such shift. Therefore, pursuant to section 202(f) and in accordance with section 101 of the Mine Act, the 1972 joint notice of finding is hereby rescinded.

## Appendix A—Why Individual Measurements are Unbiased

The accuracy of a measurement depends on both precision and bias [1,3]. Precision refers to consistency or repeatability of results, and bias refers to an error that is equally present in every measurement. Since the amount of dust present on a filter capsule is measured, for MSHA inspector samples, by subtracting the pre-exposure weight from the post-exposure weight observed in the same laboratory, any bias in the weighing process attributable to the laboratory is mathematically canceled out by subtraction. A control filter capsule will be pre- and post-weighted along with the exposed filter capsules. The weight gain of each exposed capsule will be adjusted by subtracting the weight gain or loss of the control filter capsule. Consequently, any bias introduced during storage and handling of the filter capsules is also mathematically canceled out. Therefore, since respirable dust is defined by section 202(e) of the Mine Act to be whatever is measured by an approved sampler unit, the Secretaries have concluded that a single, full-shift measurement made with an approved sampler unit provides an unbiased representation of average dust concentration for the shift and sampling location sampled. Some commenters, however, suggested that MSHA's sampling and analytical method is subject to systematic errors that would have the same effect on all measurements. These comments are addressed in this appendix.

### *I. The Value of the MRE Conversion Factor*

The current U.S. coal mine dust standard is based on studies of British coal miners. In these studies, full-shift dust measurements were made using a sampler employing four horizontal plates which removed the large-sized particles by gravitational settlement (simulating the action of the nose and throat) and collecting on a pre-weighed filter those particles which are normally deposited in the lungs [6]. This instrument, known as the Mining Research Establishment (MRE) sampler, was designed to collect airborne dust according to a collection efficiency curve, developed by the British Medical Research Council (BMRC) to approximate the deposition of inhaled

particles in the lung. Because the MRE instrument was large and cumbersome, other samplers using a 10-mm nylon cyclone were developed for taking samples of respirable dust in U.S. coal mines. However, these cyclone-based samplers collected less dust than the MRE instrument. Therefore, a factor was derived (1.38) to convert measurements obtained with the cyclone-based samplers to measurements obtained with the MRE instrument.

Two commenters noted that the 1.38 conversion factor was derived from a comparison of MRE measurements to measurements obtained using pumps made by two manufacturers [Mine Safety Appliances Co. (MSA) and Unico]. These commenters noted that there was some variability in these comparisons that MSHA and NIOSH did not consider in estimating $CV_{total}$, and noted that MSHA and NIOSH should therefore make allowances for any error or uncertainty in the conversion factor. It was also noted that the report deriving the conversion factor showed that MSA pumps more closely approximated MRE concentrations than Unico pumps, indicating that the 1.38 conversion factor (derived empirically using both types of pumps) may systematically overestimate the MRE-equivalent dust concentration for MSA samplers specifically. This commenter argued that such potential bias in the conversion factor should be addressed in order to account for the possibility of a systematic error in the conversion.

The study referred by these commenters involved collecting side-by-side samples using MRE and cyclone-based samplers [9]. The data showed that multiplying the cyclone sample concentrations by a constant factor of 1.38 gave values in reasonable agreement with MRE measurements. Consequently, a conversion factor of 1.38 was adopted for use with approved sampler units equipped with the 10-mm nylon cyclone.

Variability in the operating characteristics of individual sampler units is expressed by $CV_{sampler}$. In response to the comment on potential bias, MSHA and NIOSH reviewed the original report recommending the 1.38 MRE conversion factor. This report contained both an empirical determination, using side-by-side comparison data collected in underground coal mines, and a theoretical determination of the conversion factor. Two sets of field data were collected: one set was collected by mine inspectors who visited 200 coal mines across the U.S.; the other set was collected by investigators from MSHA's Pittsburgh laboratory at 24 coal mines. Linear regression was used to analyze both sets of data, with the slope of the regression line representing the conversion factor. The theoretical determination suggested that the conversion factor should be close to a value of 1.35. Analysis of the district mine inspector data resulted in a conversion factor of 1.38, while analysis of the laboratory investigator data suggested a greater conversion factor of 1.45.

Because the conversion factor derived from the inspector data came closer to the theoretical value, the former U.S. Bureau of Mines' Pittsburgh Technical Support Center (in the Department of Interior) recommended that 1.38 be the value adopted for any approved sampler unit operating at 2.0 L/min and equipped with a 10-mm nylon cyclone. This recommendation was subsequently accepted. The 1.38 conversion factor was not, as implied by the commenters, meant to represent the average value to be used with two different types of sampler unit, one of which is no longer in use. Instead, based largely on the theoretical value, it was meant to represent the appropriate value to be used with any approved sampler unit operating at 2.0 L/min and equipped with a 10-mm nylon cyclone. No data or analyses were submitted to suggest that this conversion factor, which has been accepted and used for over twenty years, should be any other value.

*II. Conforming to the ACGIH and ISO Standard*

One commenter implied that the respirable dust cyclone specifications used by MSHA result in a different particle collection efficiency curve than that specified by the American Conference of Governmental Industrial Hygienists (ACGIH) and the International Organization for Standardization (ISO) for a respirable dust sampler. Other commenters questioned whether the 2.0 L/min flow rate used by MSHA was appropriate, since a NIOSH study recommended using a 1.7 L/min flow rate when conforming to the recently adopted ACGIH/ISO specifications for collecting respirable particulate mass.

It is true that MSHA's respirable dust cyclone specifications result in a different particle size distribution than that specified by ACGIH and ISO. However, this fact has no bearing on the conversion to a respirable dust concentration as measured by an MRE sampler, which is the basis of the respirable dust standard. The 1.38 factor used to obtain an MRE-equivalent concentration was derived for a cyclone flow rate of 2.0 L/min. If a flow rate of 1.7 L/min were used, then this would correspond to some other factor for converting to an MRE-equivalent dust concentration. Therefore, the particle size distribution obtained at 2.0 L/min governs the relationship derived between an approved respirable coal mine dust sampler and an MRE sampler. The appropriate dust fraction (i.e., the fraction corresponding to the 1.38 conversion factor) is sampled so long as the specified 2.0 L/min flow rate is maintained.

*III. Effects of Other Variables*

The effects of any other variables on the sampled dust fraction are covered by the 1.38 conversion factor, so long as these effects were present in the data from which the conversion factor was obtained. For example, one commenter expressed concern that nylon cyclones are subject to performance variations due to static charging phenomena. Any systematic effect of static charging on the performance characteristics of the nylon cyclone is implicitly accounted for in the conversion factor, because the same static charging effect would have been present when the comparative measurements were obtained for deriving the relationship between an approved sampler unit and an MRE instrument. Random effects of static charging, i.e., effects that vary from sample to sample, are included in $CV_{total}$.

**Appendix B—Components of $CV_{total}$**

*I. Weighing Uncertainty*

(a) Derivation of $CV_{weight}$

The weight of a dust sample is determined by weighing each filter capsule before and after exposure and then determining the weight gain by subtraction. This weight gain is adjusted by subtracting any change in weight observed for the unexposed, control filter capsule. This practice eliminates potential biases due to any possible outgassing of the plastic cassette or other time-related factors but introduces two additional weighings. The weighing process is designed to control potential effects of temperature, humidity, and contamination. However, because the initial and final weighings of both the exposed and the control filter capsules are each still subject to random error, there is some degree of uncertainty in the computed weight of dust collected on the filter.

For both the control and the exposed filter capsule, the error in the weight-gain measurement results from combining two independent weighing errors. For example, suppose that the true pre- and post-exposure weights of

a filter capsule are $W_1$=392.275 mg and $W_2$=392.684 mg, respectively. The true weight gain (G) would then be:

$G=W_2-W_1=0.409$ mg.

If, due to weighing errors, pre- and post-exposure weights were measured at $w_1$=392.282 mg and $w_2$=392.679 mg, respectively, then the measured weight gain (g) would be:

$g=w_2-w_1=0.397$ mg.

The error (e) in this particular weight-gain measurement, resulting from the combination of a 7 μg error in $w_1$ and a −5 μg error in $w_2$, would then be:

$e=g-G=(w_2-w_1)-(W_2-W_1)=(w_2-W_2)-(w_1-W_1)=-5-7=-12$ μg.[4]

Imprecision in the true weight gain is expressed by $\sigma_e$, the standard deviation of e. When a weight-gain measurement (g) is converted to an MRE-equivalent concentration (in units of mg/m$^3$) based on a 480-minute sample at 2.0 L/min, both the actual weight gain (G) and the weight-gain error (e) are multiplied by the same factor:

$$\frac{1.38}{480\ \text{min}\cdot\frac{2\ \text{liters}}{\text{min}}\cdot\frac{1\ \text{m}^3}{1000\ \text{liters}}}=\frac{1.438}{\text{m}^3}$$

Therefore, the standard deviation of the propagated weighing error component in a single, full-shift measurement (x=g1.438/m$^3$) is 1.438$\sigma_e$ mg/m$^3$, assuming no adjustment for weight change in the control filter capsule.

Since a control filter capsule will be used to eliminate potential bias, the weight gain measured for the exposed filter (g) will be adjusted by subtracting the change in weight (which may be positive or negative) observed for the control filter capsule (g′). Therefore, the adjusted measurement of dust concentration is

$$x'=(g-g')\cdot 1.438/\text{m}^3.$$

Any change in weight observed for the control filter capsule is subject to the same measurement imprecision due to random weighing errors, represented by $\sigma_e$, as the weight gain measurement for an exposed filter. In addition to the weight-gain error for the exposed filter whose measured weight gain is g, x′ will also contain a weight-gain error contributed by the measured change in weight of the control filter capsule (g′). Using a standard propagation-of-errors formula, the imprecision in g-g′ is represented by

$$\sqrt{\sigma_e^2+\sigma_e^2}=\sqrt{2\sigma_e^2}=\sigma_e\sqrt{2}.$$

Therefore, the standard deviation of the propagated weighing error component in the *adjusted* measurement is 1.438$\sigma_e\sqrt{2}$ mg/m$^3$.

To form an estimate of $CV_{weight}$ when control filter capsules are used, the estimated value of 1.438$\sigma_e$ is multiplied by $\sqrt{2}$ and expressed as a percentage of the true dust concentration being measured (X):

$$CV_{weight}=\frac{1.438\cdot\sigma_e\sqrt{2}}{X}\cdot 100\% \qquad (3)$$

Since $\sigma_e$ is essentially constant with respect to dust concentration, $CV_{weight}$ decreases as the dust concentration increases.

(b) Values Expressing Weight-Gain Uncertainty

Table 1 summarizes six different values of $\sigma_e$ that have been mentioned during the proceedings related to this notice and two additional values for $\sigma_e$ derived in this appendix from data introduced during these proceedings. A ninth value for $\sigma_e$ is derived from newly acquired data being placed into the record along with this notice [14]. The nine values listed in Table 1 are not inconsistent, but as explained below, represent estimates of weight-gain imprecision during different historical periods or under different sample processing procedures.

TABLE 1.—STANDARD DEVIATION OF ERROR IN WEIGHT GAIN

| DESCRIPTION | Reference | $\sigma_e$ (μg) |
|---|---|---|
| MSHA's historical estimate of upper bound | 59 FR 8356, [15] | 97.4 |
| 1981 Measurement Assurance Estimate (older technology, truncation of weights) | [16,17] | 81 |
| Experiment on 300 unexposed, tamper-resistant filter capsules (pre- and post-weighing in different labs; no truncation). | [12] | 29 |
| Inspector samples processed between late 1992 and mid 1995 (truncation of weights; pre- and post-exposure weighing in different labs; adjusted for differences between labs). | Appendix B | 51.7 |
| NMA Data (obtained from samples collected by Skyline Coal, Inc.) | Appendix C | 76 |
| Value used in NIOSH "indirect approach" (pre- and post-exposure weighing on same day and in the same lab; derived from Kogut [12]). | 61 FR 10012, [12] | 5.8 |
| MSHA Field Study | [18,3] | 9.1 |
| 1996 Measurement Assurance Estimate | 61 FR 10012, [19] | 6.5 |
| 1997 field data (75 unexposed capsules) | [14] | 8.2 |

In MSHA's February 1994 notice, 1.438$\sigma_e$ (identified as "variability associated with the pre- and post-weighing of the filter capsule") was presented as 0.14 mg/m$^3$, or 7 percent of 2.0 mg/m$^3$, as described in Kogut [15]. It follows that the value of $\sigma_e$ implicitly assumed in MSHA's February 1994 notice (obtained by dividing 0.14 by 1.438) was 0.0974 mg (97.4 μg). Seven percent of 2.0 mg/m$^3$ had been used by MSHA from the inception of its dust enforcement program to represent an upper bound on weighing imprecision in a dust concentration measurement.

After publication of the February 1994 notice, several other candidate values for $\sigma_e$ were placed into the public record. In 1981, based on data collected to implement a measurement assurance program in MSHA's weighing laboratory, $\sigma_e$ was estimated using a method developed by the NBS to be 0.0807 mg (80.7 μg) [16]. The published NBS estimate reflected weighing technology in place at the time the article was published (1981), as well as the practice (no longer in effect for MSHA inspector samples) of truncating both the pre- and post-exposure weights down to an exact multiple of 0.1 mg. This estimate was used to calculate $CV_{weight}$ by Bartley [17], in September 1994.

Some commenters misread or misunderstood the published NBS estimate. One of these commenters claimed that "the only published report of the weighing error in MSHA's

[4] Prior to mid-1995 there were two additional sources of uncertainty in the weight gain recorded for MSHA inspector samples. First, filter capsules were routinely weighed in different laboratories before and after exposure, subjecting them to interlaboratory variability. Second, the pre- and post-exposure weights were both truncated down to the nearest exact multiple of 0.1 mg, below the weight actually measured, prior to recording weight gain and calculating dust concentration.

laboratory * * * was 0.16 mg of variation, which would convert to a concentration of 0.20 mg/m$^3$ compared to the 0.14 mg/m$^3$ * * * MSHA and NIOSH used.'' This is incorrect, since the standard deviation of weight-gain errors (including the effect of truncation) is actually identified as 0.0807 mg in the Appendix to Parobeck *et al.* [16]. The 0.16-mg figure quoted by the commenter is presented in that paper as defining a 2-tailed 95-percent confidence limit, for use in establishing process control limits. It is derived by multiplying $\sigma_e$ by 2.0. As explained above, the published value of $\sigma_e$ = 0.0807 mg is multiplied by 1.438 to propagate an MRE-equivalent concentration error of 0.116 mg/m$^3$. Contrary to the commenters' assertion, this is less—not more—than the quantity (0.14 mg/m$^3$) assumed in the February 1994 notice.

In September 1994, a more recent analysis was placed into the public record, based on repeated weighings of 300 unexposed filter capsules, each of which was weighed once in the MSA laboratory and twice in MSHA's laboratory using current equipment [12]. Based on this analysis, $\sigma_e$ was estimated to be 29 μg for pre- and post-weighings on different days at different laboratories, or 5.8 μg for pre- and post-weighings on the same day within MSHA's laboratory. The 5.8-μg value was used as part of the NIOSH ''indirect approach'' in its 1995 accuracy assessment [3]. Neither of these two estimates, however, reflects the effects of truncation or of a mean difference of about 12 μg discovered between weighings in the two laboratories. Combining these two additional effects with the 29-μg estimate results in an adjusted estimate of $\sigma_e$ = 51.7 μg for weighings made in different laboratories and truncated to a multiple of 0.1 mg. MSHA and NIOSH regard this 51.7-μg value to be the best available estimate of $\sigma_e$ for inspector samples processed between late 1992, when the current style of (tamper-resistant) cassette was introduced, and mid-1995, when the most recent changes in inspector sample processing were implemented.

Some commenters suggested that the estimates of $\sigma_e$, placed into the record in September 1994, did not adequately account for potential errors in the weighing process as it existed at that time. One of these commenters asserted that truncation error was an additional source of uncertainty that had not been accounted for. As explained above, however, $\sigma_e$ accounts for uncertainty deriving from both the pre- and post-exposure weighings. Both the 80.7-μg NBS estimate and the 97.4-μg value assumed in the February 1994 notice included the effects of truncating weight measurements to 0.1 mg. Truncation effects are also included in the 51.7-μg estimate.

Some commenters expressed special concern over the accuracy of pre-exposure filter capsule weights as measured by MSA. One commenter expressed ''grave concern'' with regard to the 12-μg systematic difference in weights found between MSA and MSHA weighings of the same unexposed capsules, as described in MSHA's 1994 analysis [12]. These concerns are moot, at least with respect to MSHA's inspector sampling program, since all inspector samples are now pre- and post-weighed at MSHA's laboratory. Furthermore, any potential bias resulting from differences in laboratory conditions on the days of pre- and post-exposure weighings should be eliminated by the use of control filter capsules. However, contrary to this commenter's interpretation, the analysis submitted to the record in September 1994 resulted in a substantially lower estimate of $\sigma_e$ than that assumed in the February 1994 notice—even after adjustment for the 12-μg systematic difference observed between weighing laboratories. The 51.7-μg estimate discussed above includes this adjustment.

MSHA and NIOSH also analyzed data submitted by the NMA in connection with these proceedings. An important result of that analysis, described in Appendix C, was an estimate of $\sigma_e$ equal to 76 μg ± 15 μg.[5] This estimate is not significantly different, statistically, from either the 97.4-μg value assumed in the February 1994 notice, the 80.7-μg NBS estimate, or the 51.7-μg value estimated for samples collected between late 1992 and mid-1995. Since the NMA data were obtained from samples collected by Skyline Coal, Inc., prior to 1995, the Secretaries believe these data confirm the 51.7-μg value of $\sigma_e$ applicable to the Skyline samples. The estimate of $\sigma_e$ obtained from the Skyline data is, however, significantly greater than the value estimated for weight-gain measurements under MSHA's current inspection program. This is explained by the fact that when the Skyline samples were collected, all samples were weighed in different laboratories before and after sampling, and the weights were truncated to 0.1 mg. before calculating the weight gain.

[5] To construct a 90-percent confidence interval for $\sigma_G$, based on the Skyline data, the 15-$\mu_g$ ''standard error of the estimate'' must be multiplied by a confidence coefficient of 1.64.

Truncation of weights, and also the practice of pre- and post-weighing samples in different laboratories, were discontinued for inspector samples in mid-1995. Under MSHA's revised procedures for processing inspector samples, filter capsules are weighed both before and after sampling in MSHA's laboratory. Furthermore, the results recorded and used in calculating dust concentrations are expressed to the nearest μg. Therefore, the 5.8-μg estimate of $\sigma_e$ described above, applying to pre- and post-exposure weighings in the same laboratory using current equipment and no truncation, was used by NIOSH to calculate $CV_{weight}$ as part of the NIOSH ''indirect'' evaluation of $CV_{total}$, placed into the public record on March 12, 1996.

Based on the results of MSHA's 1995 field study, $\sigma_e$ was estimated to be 9.12 μg [18]. In this study, the filter capsules were used to collect respirable coal mine dust samples in an underground mine between pre- and post-exposure weighings in MSHA's laboratory, potentially subjecting them to unknown sources of variability in weight gain not covered by the laboratory estimates. Substituting the estimated value of $\sigma_e$ = 9.12 μg into Equation 3 results in a corresponding estimate of $CV_{weight}$ that declines as the sampled dust concentration increases—ranging from 9.3 percent at dust concentrations of 0.2 mg/m$^3$ to less than one percent at concentrations greater than 2.0 mg/m$^3$. This estimate of $CV_{weight}$ applies to the procedure utilizing control filter capsules.

An updated estimate of $\sigma_e$ = 6.5 μg was also calculated using the published NBS procedure for filter capsules processed with the current equipment and procedures for inspector samples. This estimate, derived from weighing the same group of 55 unexposed filter capsules 139 times over a 218-day period, was described in material placed into the public record on March 12, 1996 [19]. The 6.5 μg estimate applies to filter capsules pre- and post-weighed robotically on different days within MSHA's laboratory, but it does not reflect any potential effects of removing the capsule from the laboratory and exposing it in the field between weighings.

The estimate of imprecision in measured weight gain derived from the MSHA's 1995 field study discussed earlier (9.1 μg), falls only slightly above the 6.5 μg laboratory estimate. This suggests that the process of handling and actually exposing the filter capsule in a mine environment does not add appreciably to the imprecision in measured weight gain.

In February 1997, 75 unexposed filter capsules that had been pre-weighed in MSHA's laboratory and distributed to MSHA district offices were recalled and reweighed [13]. After adjusting for variability attributable to the date of initial weighing (i.e., variability that would be eliminated by use of a control filter capsule), these data provide an estimate of $\sigma_e$ equal to 8.2 $\mu g$ [14]. This estimate, which is based on weighings separated by a span of about four to five months, corroborates the 9.1 $\mu g$ estimate obtained from MSHA's 1995 field study.

(c) Negative Weight-Gain Measurements

Some commenters pointed out that MSHA routinely voids samples when the measured pre-exposure weight of a filter capsule is greater than the measured post-exposure weight. According to these commenters, such occurrences reflect an unacceptable degree of inaccuracy in weight-gain measurements. One commenter asserted that such cases are ''of particular significance when only one sample is relied upon.'' This commenter attributed such occurrences solely to errors in the capsule pre-weight and implied that they should not be expected to occur under MSHA's quality assurance program. It was, therefore, implied that negative weight-gain measurements are not consistent with the degree of uncertainty being attributed to weighing error.

Prior to implementation of the 1995 processing modifications, a significant fraction of samples with less than 0.1 mg of true weight gain (i.e., $G < 0.10$ mg) could be expected to exhibit negative weight gains (i.e., $g \leq -0.1$ mg). Contrary to the commenter's implication, however, negative weight-gain measurements do not arise exclusively from positive pre-exposure weighing errors (i.e., $w_1 > W_1$). They can also arise, with equal likelihood, from negative post-exposure weighing errors (i.e., $w_2 < W_2$).

What is required for a negative weight gain ($w_2 < w_1$) is that $e < -G$. Since the true weight gain (G) is always greater than or equal to zero, this means that a negative weight gain is observed when e is sufficiently negative. Under standard assumptions of normally distributed errors, $\sigma_e$ fully accounts for the probability of such occurrences. Naturally, this probability becomes smaller as G increases and also as $\sigma_e$ decreases.

The occasional negative weight-gain measurements that have been observed are consistent with values of $\sigma_e$ estimated for previous processing procedures. Table 2 contains the probability of a negative weight-gain measurement for true weight gains (G) ranging from 0.0 mg to 0.08 mg, assuming $\sigma_e = 51.7$ µg and the previous practice of truncation, which has now been discontinued for inspector samples. Since the purpose here is to evaluate the probability of negative weight gains under MSHA's previous processing procedures, it is also assumed that no control filter capsules are used to adjust weight gains.

TABLE 2.—PROBABILITY OF NEGATIVE WEIGHT-GAIN MEASUREMENT, ASSUMING TRUNCATION AND $\sigma_e$=51.7 µg

| True weight gain $G=W_2-W_1$ (mg) | Estimated probability of negative measurement, % |
|---|---|
| 0.00 | 12.9 |
| .01 | 8.4 |
| .02 | 5.1 |
| .03 | 2.8 |
| .04 | 1.5 |
| .05 | 0.7 |
| .06 | .4 |
| .07 | .2 |
| .08 | .1 |

NOTE: Tabled probabilities (in percent) were obtained from a simulation of 35,000 weight-gain measurements at each value of G, assuming normally distributed weighing errors and the now discontinued practice of measurement truncation.

One commenter suggested the use of a test based on the frequency of negative weight-gain measurements to check the magnitude of the MSHA/NIOSH estimate of $CV_{total}$. As proposed by the commenter, the test of $CV_{total}$ would consist of comparing the observed proportion of samples voided due to a negative recorded weight gain to the proportion expected, given $CV_{total}$ equal to the MSHA/NIOSH estimate. If the observed proportion were to exceed the expected proportion, then this would constitute evidence that $CV_{total}$ was being underestimated.

The commenter miscalculated the expected proportion, because he mischaracterized the MSHA/NIOSH estimate of $CV_{total}$ as constant over the continuum of dust concentrations. The MSHA/NIOSH estimate of $CV_{total}$ increases as dust concentrations decrease. This would cause a higher proportion of negative results than what the commenter projected under the MSHA/NIOSH estimate, regardless of what statistical distribution of dust concentrations is assumed.

The commenter's projection also neglected to take into account the effects of truncating pre- and post-exposure weights to multiples of 0.1 mg. Although this practice has now been discontinued for MSHA inspector samples, it is a factor in the available historical data.

In principle, if the statistical distribution of true dust concentrations were known, the expected proportion of samples voided for negative weight gain could be recalculated to reflect both a variable $CV_{total}$ and, when applicable, truncation of recorded weights. However, under the commenter's proposal, deriving the expected proportion of negative measurements would involve not only $CV_{total}$, but also an estimate of the distribution of true dust concentrations. Such an estimate would rely on the tenuous assumption that a mixture of dust concentrations in different environments is closely approximated by a lognormal distribution far into the lower tail—i.e., even at concentrations extremely near zero. Furthermore, valid estimation of the lognormal parameters, applicable to dust concentrations near zero, would be complicated by measurement errors, especially those resulting in negative or zero values. Depending on the data used, truncation effects could also confound the analysis.

Before truncation was discontinued, negative weight-gain measurements were caused by various combinations of pre- and post-exposure weighing and truncation error. Since truncation, and especially interlaboratory variability, have now been removed as sources of error in weight-gain measurements for inspector samples, negative weight-gain measurements are expected to occur less frequently than in the past.

(d) Comparing weight gains obtained from paired samples

Some commenters maintained that ''although there may be slight differences between how the samples are dried * * *,'' differences between the weight gain observed in MSHA samples and simultaneous samples collected nearby (and processed at an independent laboratory) indicated a greater degree of weighing uncertainty than what was being assumed. In response to the Secretaries' request for any available data supporting this position, results from paired dust samples were provided by two coal companies.

In comparing measurements obtained from paired samples, there are several important considerations that some commenters did not take into account. First, if two different sampler units are exposed to identical atmospheres for the same period of time, the difference between weight-gain measurements $g_1$ and $g_2$ arises, in part, from two independent weight-gain measurement errors, $e_1$ and $e_2$. If uncertainty due to

each of these errors is represented by $\sigma_e$, then the difference between $g_1$ and $g_2$ has uncertainty due to weighing error equal to $\sigma_e\sqrt{2}$. Consequently, weight gains measured in the same laboratory, on the same day, for different filter capsules exposed to identical atmospheres can be expected to differ by an amount whose standard deviation is $1.41 \bullet \sigma_e$.

Furthermore, if the two exposed capsules are processed at different laboratories, the difference in weight gains contains an additional error term arising from differences between laboratories. Evidence was presented that this term ($\sigma_\sigma$ in the notation of [12]) is far more significant than the intra-lab, intra-day weighing error in MSHA's laboratory. Moreover, the additional uncertainty introduced by use of a third laboratory also depends on unknown weighing imprecision within that laboratory, which may differ from that maintained by MSHA's measurement assurance process. (See Appendix C for analysis of paired sample data submitted by NMA).

However, the most important consideration in comparing weight gains from two different samples is that under real mining conditions, the atmospheres sampled may not be identical—even if the sampler units are located near one another. Differences in atmospheric dust concentrations over relatively small distances have been documented [20]. Such differences would be expected to produce corresponding differences in weight gain that are unrelated to the accuracy of a single, full-shift measurement as defined by the measurement objective explained earlier in this notice.

*II. Pump Variability*

The component of uncertainty due to variability in the pump, represented by $CV_{pump}$, consists of potential errors associated with calibration of the pump rotameter, variation in flow rate during sampling, and (for those pumps with rotameters) variability in the initial adjustment of flow rate when sampling is begun. The Secretaries believe that $CV_{pump}$ adequately accounts for all uncertainty identified by commenters as being associated with the volume of air sampled.

In deriving the Values Table published in MSHA's February 1994 notice, MSHA used a value of 5 percent to represent uncertainty associated with initial adjustment of flow rate at the beginning of the shift and another value of 5 percent to represent flow rate variability. The 5-percent value for variability in initial flow rate adjustment was estimated from a laboratory experiment conducted by MSHA in the early 1970s, while the value for flow rate variability was based on the allowable flow rate tolerance specified in 30 CFR part 74. This part requires that the flow rate of all sampling systems not vary by more than ±5 percent over a full shift with no more than two adjustments. MSHA did not include a separate component of variability for pump rotameter calibration because it was already included in the 5-percent value used to represent flow rate variability.

Based on a review of published results [10], the Secretaries concluded that the component of uncertainty associated with the combined effects of variability in flow rate during sampling and potential errors in calibration is less than 3 percent. Therefore, as proposed in the March 12, 1996 notice, the Secretaries are now estimating uncertainty due to variability in flow rate to be 3 percent.

Because MSHA could not provide the experimental data supporting the 5-percent value used to represent uncertainty associated with the initial adjustment of flow rate, one commenter recommended that MSHA conduct a new experiment. In response to that request, MSHA conducted a study to establish the variability associated with the initial flow rate adjustment. The study, placed into the public record on September 9, 1994, attempted to emulate realistic operating conditions by including a variety of sampling personnel making adjustments under various conditions. Results showed the coefficient of variation associated with the initial adjustment to be $3 \pm 0.5$ percent [11]. The Secretaries consider this study to provide the best available estimate for uncertainty associated with the initial adjustment of a sampler unit's flow rate. Therefore, as proposed in the March 12, 1996 notice, the Secretaries are now estimating uncertainty due to variability in the initial adjustment to be 3 percent.

One commenter expressed concern regarding how representative MSHA's study on initial flow rate adjustment was of actual sampling conditions. The Secretaries consider the conditions under which the study was conducted to have adequately mimicked conditions under which the flow rate of a coal mine dust sampling system is adjusted. This was more rigorous than the original study, from which MSHA estimated the 5-percent value assumed in the February 12, 1994 notice. The tests were conducted in an underground mine, using both experienced and inexperienced persons to make the adjustments. Also, the only illumination was supplied by cap lamps worn by the person making the adjustments. Tests were conducted for adjustments made in three different physical positions: standing, kneeling and prone. Inspection personnel participating in the study provided guidance as to the methods typically used by inspection personnel in adjusting pumps. In fact, environmental conditions under which the test was conducted were generally more severe than those normally encountered by inspection personnel, since initial adjustment of the pumps normally occurs on the surface just before the work shift begins.

The same commenter also questioned why only the variability associated with initial adjustment of the flow rate was estimated and not the variability associated with subsequent adjustments during the shift. This is because the variability associated with the subsequent flow rate adjustments of an approved sampler unit is already included in the 3-percent value estimated for variability in flow rate over the duration of the shift.

Since variability in the initial flow rate adjustment is independent of calibration of the pump rotameter and variability in flow rate during sampling, these two sources of uncertainty can be combined through the standard propagation of errors formula:

$$CV_{pump} = \sqrt{(3\%)^2 + (3\%)^2} = 4.2\%$$

This estimate accords well with a more recent finding based on 186 measurements in an underground mine, using constant flow-control pumps [18]. That study estimated $CV_{pump} = 4.0$ percent and concluded that $CV_{pump}$ was unlikely to exceed 4.4 percent.

Three commenters stated that there are reports of sampling pumps being calibrated and used at altitudes differing by as much as 3000 feet and that, for many pumps, this could result in more than a 3-percent change in flow rate per 1000 feet of altitude. MSHA recognized this as a potential problem as early as 1975. As a result, MSHA conducted a study to ascertain the effect of altitude on coal mine dust sampler calibration [21]. The study showed that both pump performance and rotameter calibration were affected by changes in altitude but that an approved MSA sampling system, calibrated and adjusted at an altitude of 800 feet to a flow rate of 2.0 L/min, would meet the requirement of 30 CFR 74.3(11) when sampling at an altitude of 10,000 feet, even if no adjustment were made to the pump. The study also provided equations for adjusting the calibration mark on the pump rotameter so that, when sampling at an altitude

different from the one at which the rotameter was calibrated, the appropriate flow rate would be obtained. These procedures are used by MSHA inspectors in instances where the sampling altitude is significantly different from the altitude where the sampling system is calibrated.

Some commenters questioned the ability of the older MSA Model G pumps to meet the same flow rate specifications as new pumps. MSHA has discontinued the use of these older pumps in its sampling program and will be using only flow-control pumps. More recent MSHA studies show that these pumps continue to meet the flow rate requirement of 30 CFR 74.3(11) at altitudes up to 10,000 feet [22]. As a result, the flow-control pumps currently used by inspectors can be calibrated at one altitude and used at another altitude with no additional adjustments made to the pumps. Furthermore, all sampler units used to measure respirable dust concentrations in coal mine environments are required to be approved in accordance with the regulatory requirements of 30 CFR part 74, which require flow rate consistency to be within ± 0.1 L/min of the 2.0 L/min flow rate.[6] MSHA's experience over the past 20 years has demonstrated that flow rate consistency of older sampling systems will continue to meet the requirements specified in part 74, provided the systems are regularly calibrated and maintained in approved condition. To ensure that sampling systems continue to meet the specification of part 74, MSHA's policy requires calibration and maintenance by specially trained personnel in accordance with MSHA Informational Report No. 1121 (revised).

*III. Intersampler Variability*

Intersampler variability, represented by $CV_{sampler}$, accounts for uncertainty due to physical variations from sampler to sampler. Most of the commenters ignored this source of uncertainty. One commenter, however, stated that 10-mm nylon cyclones are subject to performance variations due to static charging phenomena (discussed in Appendix A).

Intersampler variability was investigated by Bowman *et al.* [10], Bartley *et al.* [17], and Kogut *et al.* [18]. Bowman *et al.* designed a precision experiment to determine the contribution to $CV_{total}$ from differences between individual coal mine dust sampler units. Based on their experiment, they reported $CV_{sampler}$ = 1.6 percent, which included variation in both the 10-mm nylon cyclone and the MSA Model G pump. They concluded that this low degree of component variability indicates there is excellent uniformity in the mechanical components of dust sampler units. Bartley, from his experimental investigation of eight 10-mm nylon cyclones, estimated $CV_{sampler}$ to be no more than 5 percent for aerosols with a size distribution typical of those found in coal mine environments. Based on an analysis involving 32 different sampler units, Kogut *et al.* found that $CV_{sampler}$ was unlikely to exceed 3.1 percent. Unlike Bartley's study, however, this analysis relied on new cyclones, which might be expected to exhibit less variability than older, heavily used cyclones. Therefore, NIOSH used the more conservative estimate of 5 percent, with an upper 95-percent confidence limit of 9 percent, in its ''indirect approach'' for estimating $CV_{total}$ and evaluating method accuracy [3].

**Appendix C—Data Submitted by Commenters**

During the public hearings, several commenters indicated they had data showing that MSHA and NIOSH had underestimated the overall magnitude of uncertainty associated with a single, full-shift measurement. These data and accompanying analyses were submitted to the record and evaluated by MSHA and NIOSH. Some of the data sets consisted of paired samples, where two approved sampler units were placed nearby one another and operated for a full shift. One of the resulting samples was analyzed in MSHA's laboratory and the other by an independent laboratory. These data were represented as showing that single, full-shift measurements cannot accurately be used to estimate dust concentrations. Other data sets submitted consisted of unpaired measurements collected from miners at intervals over varying spans of time. These data sets were represented as showing that exposures vary widely between shifts and between occupations.

*I. Paired Sample Data Submitted by the NMA*

The American Mining Congress and National Coal Association [AMC and NCA have since merged into the National Mining Association, (NMA)] submitted at the request of MSHA and NIOSH a data set consisting of 381 pairs of exposure measurements. These measurements had been obtained from the ''designated occupations'' on two longwall and six continuous mining sections belonging to Skyline Coal, Inc. Two sampling units were placed on each participating miner and operated for the full shift. After sampling, one sample cassette was sent to MSHA for analysis while the other was analyzed at a private laboratory. All samples were reported to be ''portal to portal'' samples as required by MSHA regulations. Using these data, the NMA estimated an overall CV of 16 percent. Based on this 16-percent estimate, the NMA suggested that MSHA had underestimated measurement uncertainty in its February 1994 notice by 60 percent at dust concentrations of 2.0 mg/m$^3$.

The NMA estimate of 16 percent for overall CV includes not only sampling and analytical error, but also variability arising from two additional sources: (1) Spatial variability between the locations where the two samples were collected; and (2) interlaboratory variability introduced by the fact that a third laboratory was involved in weighing exposed filter capsules.

Since the two dust samples within each pair submitted were not collected at precisely the same location, differences observed between paired samples in the Skyline data are partly due to spatial variability. The Secretaries fully recognize and acknowledge that, as suggested by the Skyline data, spatial variability in mine dust concentrations can exist, even within a relatively small area such as the so-called breathing zone of a miner. Consistent with general industrial hygiene practice, however, the Secretaries do not consider such variability relevant to the accuracy of an individual dust concentration measurement.

The NMA expressed sampling and analytical error as a single percentage relative to the average of all dust concentrations that happened to be observed in the data analyzed. Contrary to the NMA analysis, sampling and analytical error cannot be expressed as a constant percentage of the true dust concentration. Because $\sigma_e$ is constant with respect to dust concentration, $CV_{weight}$ declines with increasing dust concentration, as explained in Appendix B. The value of $CV_{total}$ assumed by MSHA and NIOSH for the period when the Skyline samples were collected is approximately 7.5 percent when the true dust concentration ($\mu$) is 2.0 mg/m$^3$ and approximately 16.2 percent when $\mu$ = 0.5 mg/m$^3$. This is based on applying Equations 2 and 3 to

[6] Section 74.3(13) requires that flow rate in an approved sampler unit deviate from 2.0 L/min by no more than 5 percent over an 8-hour period, with no more than 2 readjustments after the initial setting. However, this is a maximum deviation, and the uncertainty associated with pump flow rate, as quantified by its coefficient of variation, is 3 percent.

$\sigma_e$ = 51.7 µg, $CV_{pump}$ = 4.2 percent, and $CV_{sampler}$ = 5 percent.

Even if the effects of spatial variability and the third laboratory are ignored, and the overall CV is interpreted as an average over the range of concentrations encountered, the 16-percent value reported by the NMA makes no allowance for the paired covariance structure of the data. Therefore, MSHA and NIOSH consider the 16-percent value to be erroneous, even under NMA's assumptions.

MSHA and NIOSH re-analyzed the Skyline data in order to check whether these data were consistent with the value of $\sigma_e$ (i.e., 51.7 µg) estimated for the time when the Skyline samples were collected. To distinguish the NMA interpretation of sampling and analytical error (including spatial variability) from the Secretaries' interpretation (excluding spatial variability), SAE will denote sampling and analytical error according to the Secretaries' interpretation, and SAE* will denote sampling and analytical error according to the NMA interpretation. If $CV_{spatial}$ denotes the component of SAE* attributable to spatial variability for each measurement, it follows that $SAE^* = (CV^2_{total} + CV^2_{spatial})^{1/2}$.

To estimate SAE* as a function of dust concentration from the data provided, a least-squares regression analysis was performed on the square of the difference between natural logarithms of dust concentrations $x_1$ and $x_2$ observed within each pair. Let $\mu^*$ denote the true mean dust concentration, not only over the full shift sampled, but also over the two locations sampled. The expected value (E{•}) of each squared difference forms the ordinate of the regression line at each value of the abscissa $(1/\mu^*)^2$:

$$E\{(Ln(X_1) - Ln(X_2))^2\} \approx 2(SAE^*)^2$$
$$= 2(CV^2_{total} + CV^2_{spatial})$$
$$= 2[CV^2_{pump} + CV^2_{sampler} + CV^2_{weight} + CV^2_{spatial}]$$
$$= 2(CV^2_{pump} + CV^2_{sampler} + CV^2_{spatial}) + 2(1.438\sigma_e/\mu^*)^2$$
$$= a_0 + a_1(1/\mu^*)^2$$

Since no control filter capsules were used in processing the Skyline dust samples, $CV_{weight}$ does not, in this analysis, contain the $\sqrt{2}$ factor shown in Equation 3 of Appendix B. The intercept of the regression line is $a_0 = 2(CV^2_{pump} + CV^2_{sampler} + CV^2_{spatial})$, and the slope is $a_1 = 2(1.438\sigma_e)^2$. To carry out the regression analysis, $\mu^*$ was approximated by $(x_1+x_2)/2$. Regression estimates of the parameters $a_0$ and $a_1$ were used to generate corresponding estimates of $\sigma_e$ and $CV^2_{spatial}$.

The least squares estimate of $\sigma_e$ obtained from this analysis is 76.0 µg, with standard error of ±15 µg. This is not significantly different, statistically, from the 51.7-µg value estimated for the time period when the Skyline samples were collected. Assuming $CV_{pump}$=4.2 percent and $CV_{sampler}$=5 percent, the value of $CV_{spatial}$ obtained from the least squares estimate of $a_0$ is 19.7 percent, with standard error of ±2.9 percent.

*II. Paired Sample Data Submitted by Mountain Coal Company*

Mountain Coal Company submitted a data set consisting of the difference (expressed in $mg/m^3$) between paired samples collected from miners over roughly a one-year period. Two sampler units were placed on each participating miner (presumably one on each collar or shoulder) and operated for roughly a full shift. One sample cassette was sent to MSHA for analysis (post-weighing) while the other was analyzed at a private laboratory.

Mountain Coal Company provided only the differences between measurements within each pair and not the concentration measurements themselves. Since $CV_{total}$ varies with dust concentration, and the dust concentrations were not provided, it was impossible to form a valid estimate of measurement variability from these data, or to determine what part of the observed differences could be attributed to weighing error and what part to spatial variability or variability attributable to operation of the pump and physical differences between sampler units.

*III. Exposure Data Submitted by Jim Walter Resources, Inc.*

Jim Walter Resources, Inc. submitted a data set consisting of exposure measurements collected from all miners working on two longwall sections. Measurements were collected from each miner on five consecutive days. This procedure was repeated during five sampling cycles over a two-year period. During each sample cycle the five measurements for each miner were averaged and compared to the respirable dust standard. According to Jim Walter Resources, Inc., the sampling plan ''eliminates the effect of the variability of the environment and minimizes the error due to the coefficient of variation of the pump because *all miners* [original emphasis] are sampled for five shifts,'' and these data ''show the variability of the sample pump and of the worker's exposure to respirable dust.''

In its submission, Jim Walter Resources, Inc. apparently assumed that the quantity being measured is average dust concentration across a number of shifts, rather than average dust concentration averaged over a single shift at the sampling location. The Secretaries agree that dust concentrations do vary from shift to shift and from job to job, as these data illustrate. This variability, however, is largely under the control of the mine operator and should not be considered when evaluating the accuracy of a single, full-shift measurement.

*IV. Exposure Data Submitted by the NMA*

The NMA submitted data consisting of recently collected and historical measurements collected from the designated occupations (continuous miner operator for continuous mining sections and either the headgate or tailgate shearer operator for longwall mining sections) for three continuous mining sections and five longwall mining sections. According to the NMA analysis, there is a 17-percent probability that these mines would be cited, even though the long-term average is less than the respirable dust standard.

The NMA failed to recognize that the quantity being measured is dust concentration averaged over a single shift at the sampling location. The Secretaries agree that exposures do vary from shift to shift, as these data illustrate. This variability, however, is largely under the control of the mine operator and should not be considered when evaluating the accuracy of a single, full-shift measurement.

*V. Sequential Exposure Data Submitted by Jim Walter Resources, Inc.*

Jim Walter Resources, Inc. submitted data collected from several longwall faces. For each longwall, seven dust samples were collected, using sampler units placed on the longwall face at least 48'' from the tailgate at the MSHA 061 designated location. Pumps were successively turned off in one hour increments, resulting in samples covering progressively longer time periods over the course of the shift, from one to eight hours. This was repeated on a number of days at each longwall.

Many of the samples showed either the same or less weight gain than the previous sample (collected over a shorter time period) within a sequence. In the cover letter and written comments accompanying these data, it was claimed that the weight gains observed for samples within each sequence should progressively increase, irrespective of variations in air flow and production levels, and that the patterns observed exemplify ''the variability of sample results with today's equipment and weighing techniques.''

MSHA and NIOSH have concluded that these data cannot be used to estimate or otherwise evaluate measurement accuracy for the following reasons: First, a highly sensitive and accurate sampling device would be expected to produce variable results when exposed to even slightly different environments. Since the samples within each sequence of seven were not collected at exactly the same point, they are subject to spatial variability in dust concentration. It is well known that dust concentrations can vary even within small areas along a longwall face.

Therefore, variability in sample results is attributable not only to measurement errors but also to variations in dust concentration due to spatial variability.

Second, even on a production shift, variations in air flow and production levels over the course of the shift can result in periods within the shift during which the true dust concentration to which a sampler is exposed is low or near zero. If a sampler unit is exposed to a relatively low dust concentration during the final hour in which it is exposed, any difference between that sample and the previous sample will tend to be dominated by spatial variability. In such cases the increase in weight accumulated during the final hour would be statistically insignificant as compared to variability in dust concentration at different locations. Without detailed knowledge of the airflow and production levels as they varied over each shift, it is impossible to determine how many cases of this type would be expected. However, approximately one-half of such samples would be expected to exhibit less weight gain than the previous sample.

Further, because sample weights were truncated to 0.1 mg at the time these data were collected, and because expected weight gains of less then 0.1 mg are not uncommon over a one-hour period, there would be no apparent increase in recorded weight gain in many cases where the two sample results actually differed by a positive amount. Therefore, some unknown number of cases showing no difference in successive weight gains are attributable to truncation effects. Truncation has now been discontinued for samples collected under MSHA's inspection program.

Finally, as has been shown in Appendix B, a certain percentage of negative weight-gain measurements at low dust concentrations is consistent with the weighing imprecision experienced at the time these samples were collected. However, since these data were not collected in a controlled environment, it is impossible to determine what that percentage should be. Because the weight gain for each sample is determined as the difference between two weighings, comparison of weight gains between two samples involves a total of four independent weighing errors. Therefore, variability attributable purely to weighing error in the difference between weight gains in two successive samples is greater (by a factor equal to $\sqrt{2}$) than variability due to weighing error in a single sample. Furthermore samples collected over less than a full shift are subject to more variability due to random fluctuations in pump air flow and cyclone performance than samples collected over a full shift. Both of these considerations increase the likelihood that a sample will exhibit less weight gain than its predecessor, as compared to the likelihood of recording a negative weight gain for a single, full-shift sample.

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*Altitude, Sample Port Inlet Loading, and Temperature on the Volumetric Flow Rate of the MSA Escort Elf® Constant Flow Rate Pump*. Pres. at Second International Conference on the Health of Miners, Pittsburgh, PA, November 11–13, 1995.

Dated: December 19, 1997.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

Dated: December 19, 1997.

**Linda A. Rosentock,**

*Director, National Institute for Occupational Safety and Health.*

**Note**: For the convenience of the user, notice document 97–33934 is being reprinted in its entirety because of numerous errors in the document originally appearing at 62 FR 68372–68395, December 31, 1997. Those wishing to see a listing of corrections, please call Patricia Silvey, Mine Safety and Health Administration, 703–235–1910.

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Coal Mine Respirable Dust Standard Noncompliance Determinations

*Correction and Republication*

**Note**: For the convenience of the user, notice document 97–33937 is being reprinted in its entirety because of numerous errors in the document originally appearing at 62 FR 68395–68420, December 31, 1997. Those wishing to see a listing of corrections, please call Patricia Silvey, Mine Safety and Health Administration, 703–235–1910.

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice; final policy.

**SUMMARY:** This notice announces the Mine Safety and Health Administration's (MSHA) final policy concerning the use of single, full-shift respirable dust measurements to determine noncompliance and issue citations, based on samples collected by MSHA, when the applicable respirable dust standard is exceeded. This notice should be read in conjunction with the notice published elsewhere in today's **Federal Register** jointly by the Department of Labor and the Department of Health and Human Services.

**EFFECTIVE DATE:** This policy is effective March 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ronald Schell, Chief, Division of Health, Coal Mine Safety and Health; MSHA; 703–235–1358.

**SUPPLEMENTARY INFORMATION:**

## I. About This Notice

This notice provides information about MSHA's new enforcement policy for the use of single, full-shift respirable dust measurements obtained by inspectors to determine noncompliance with the respirable dust standard (applicable standard) under the MSHA coal mine respirable dust program. A question and answer format has been used to explain the background for the enforcement policy, the reasons for the policy change, and the specific elements of the new policy. In addition, several appendices are attached to and incorporated with this final notice which address technical issues concerning the new enforcement policy.

## II. Background Information

### *A. How Has MSHA Sampled Coal Mines for Noncompliance in the Past?*

Prior to October 1975, noncompliance determinations were based on the average of full-shift measurements collected from individual occupations on multiple shifts. MSHA interprets a full shift for underground coal mines to mean the entire shift worked or 8 hours in duration or whichever time period is less (30 CFR 70.201(b)). The need to reduce the Agency's administrative burden attributable to inspector sampling prompted MSHA to revise its underground health inspection procedures and redirect the Agency's enforcement resources away from sampling and toward assessing the effectiveness of mine operators' respirable dust control programs.

Since October 1975, MSHA has determined noncompliance with the applicable standard based on the average of measurements obtained for different occupations during the same shift of a mechanized mining unit (MMU), or on the average of measurements obtained for the same occupation on successive days. The term MMU is defined in 30 CFR 70.2(h) to mean a unit of mining equipment, including hand loading equipment, used for the production of material. MSHA inspectors routinely sample multiple occupations to determine compliance with the applicable standard, assess the effectiveness of mine operators' dust control programs, determine whether excessive levels of quartz dust are present, and verify the designation of the ''high risk occupation'' (now referred to as the ''designated occupation'' or ''D.O.''—the occupation on a working section exposed to the highest respirable dust concentration) to be sampled by mine operators.

Under the sampling procedures in place between 1975 and 1991, MSHA inspectors would collect full-shift measurements from the working environment of the ''D.O.'' and four other occupations, if available, on the first day of sampling each MMU. The mine operator was cited if the average of all measurements obtained during the same shift exceeded the applicable standard by at least 0.1 milligram of respirable dust per cubic meter of air ($mg/m^3$). If one or more measurements exceeded the applicable standard but the average did not, the Agency's practice was to continue sampling for up to four additional production shifts or days. If the inspector continued sampling after the first day because a previous measurement exceeded the applicable standard, noncompliance determinations were based on either the average of all measurements taken or on the average of measurements taken on any one occupation. Thus, if the average of measurements taken over more than one day on all occupations was less than or equal to the applicable standard, but the average of measurements taken on any one occupation exceeded the value set by MSHA (based on the cumulative concentration for two or more measurements exceeding 10.4 $mg/m^3$, which is equivalent to a 5-measurement average exceeding 2.0 $mg/m^3$), the operator was cited for exceeding the applicable standard.

In some instances, MSHA inspectors sampled for a maximum of five production shifts or days before making a noncompliance determination. However, most citations issued prior to 1991 were based on the average of multiple measurements on different occupations collected during a single shift. To illustrate, MSHA conducted a computer simulation using data from 3,600 MMU inspections conducted between October 1989 and June 1991. This simulation showed that a total of 293 MMUs would have met the criteria to be found in noncompliance with the applicable standard based solely on the average of multiple measurements. Two hundred forty-two of those noncompliance determinations, or 83 percent, met the citation criteria based on sampling results from the first day of MSHA sampling, rather than from multi-day sampling. Only 51 MMUs, or 17 percent, were citable based on the average of measurements collected over multiple shifts or days. These statistics clearly show that the citation criteria were met based not only on the average of measurements taken during several shifts, but also on the average of

multiple measurements obtained during the same shift.

*B. Why Did MSHA Establish the Coal Mine Respirable Dust Task Group and Initiate the Spot Inspection Program?*

In 1991 concerns were raised about the adequacy of MSHA's program to control respirable coal mine dust in underground coal mines. In response to these issues, MSHA established the Coal Mine Respirable Dust Task Group (Task Group) to comprehensively evaluate the effectiveness of the Agency's respirable dust program.

The Task Group was directed to consider all aspects of the current program, including the role of the individual miner in the sampling program; the feasibility of MSHA conducting all sampling; and the development of new and improved monitoring technology, including technology to continuously monitor the mine environment. Among the issues addressed by the Task Group was the actual dust concentration to which miners are exposed. As a result, the Agency initiated a special respirable dust ''spot inspection program'' (SIP), designed to provide the Agency with more accurate information on the dust levels to which miners were exposed, through sampling, in the underground coal mine environment.

*C. How Was Sampling Accomplished During the SIP?*

Because of the large number of mines and MMUs involved and the need to obtain data within a short time frame, sampling during the SIP was limited to a single shift or day, a departure from MSHA's normal sampling procedures. As a result, the Agency determined that if the average of multiple occupation measurements taken on an MMU during any one-day inspection did not exceed the applicable standard, the inspector would review the result of each sample individually. If any individual measurement exceeded the applicable standard by an amount specified by MSHA, a citation would be issued for noncompliance, requiring the mine operator to take immediate corrective action to lower the average dust concentration.

The sampling practice under the SIP was similar to the practice of the Metal/Nonmetal Health Division of MSHA, and the Occupational Safety and Health Administration (OSHA), which use a single, full-shift measurement for noncompliance determinations, and provides for a margin of error to account for uncertainty in the measurement process (sampling and analytical error). This resulted in the issuance of citations using a single, full-shift measurement only when there was a high level of confidence that the applicable standard was actually exceeded.

Thus, during the SIP inspections, MSHA inspectors cited violations of the current 2.0 mg/m$^3$ standard if either the average of five measurements taken on a single shift was greater than or equal to 2.1 mg/m$^3$, or any single, full-shift measurement was greater than or equal to 2.5 mg/m$^3$. Similar adjustments were made when the 2.0 mg/m$^3$ standard was reduced due to the presence of quartz (crystalline silica) dust in the mine environment.

*D. What Did the SIP Show About MSHA's Sampling Policy?*

MSHA's review of the SIP inspections showed that 28 percent of 718 MMUs sampled exceeded the applicable standard and would have been citable based on a single, full-shift measurement, but only 12 percent would have been citable using the average of all measurements for the MMU.

Based on the data from the SIP inspections, the Task Group concluded that the Agency practice of determining noncompliance based solely on the average of multiple measurements did not always reveal situations in which miners were overexposed. For example, if the measurements obtained for five different occupations within the same MMU were 4.1, 1.0, 1.0, 2.5, and 1.4 mg/m$^3$, the average concentration would be 2.0 mg/m$^3$ and no enforcement action would be taken, even though the dust measurements for two of these occupations significantly exceeded the applicable standard. While such individual measurements were not cited prior to the SIP, they would clearly demonstrate that some miners were overexposed. MSHA policy prior to the SIP however, required the inspector to return to the mine on the next production day and resume sampling, rather than issue a citation at the time the overexposures were discovered.

*E. Why Did MSHA Decide To Permanently Adopt the SIP Procedures?*

The SIP inspections revealed instances of overexposure that were masked by the averaging of results across different occupations. This showed that miners would not be adequately protected if noncompliance determinations were based solely on the average of multiple measurements. The process of averaging dilutes a high measurement made at one location with lower measurements made elsewhere. Similarly, averaging a number of full-shift measurements can obscure cases of overexposure.

Additionally, the Task Group recognized that the initial full-shift samples collected by an inspector are likely to show higher dust concentrations than succeeding samples collected on subsequent shifts during the same inspection. MSHA's data showed that the average concentration of all samples taken on the same occupation on the first day of an inspection was almost twice as high as the average concentration of those taken on the second day. MSHA recognized that sampling on successive days after an inspector first appears could result in measurements that are not representative of dust conditions to which miners are typically exposed. Unrepresentative measurements would arise if mine operators anticipated the continuation of inspector sampling and made adjustments in dust control parameters or production rates to reduce dust levels during the subsequent monitoring. None of this is specifically prohibited by MSHA regulations. As a result of these findings, which indicated that miners were at risk of being overexposed, MSHA decided to permanently adopt use of the single, full-shift measurement inspection policy initiated during the SIP. These procedures were used by MSHA until the issuance of the decision by the Federal Mine Safety and Health Review Commission in the case of *Keystone Coal* v. *Sec. of Labor*, 16 FMSHRC 6 (Jan. 4, 1994). Since that decision, MSHA has reverted to its previous practice of basing noncompliance determinations on the average of multiple, full-shift measurements. (Please see the notice of joint finding by the Secretary of Labor and the Secretary of Health and Human Services (HHS) published elsewhere in today's **Federal Register** for an explanation of this decision.)

## III. Why MSHA Is Revising Its Enforcement Policy

*A. What Has Changed To Warrant Revising the Existing Enforcement Policy?*

During the public hearings held on the proposed joint finding that a single, full-shift sample is an accurate measurement, during the public meetings held on this enforcement policy notice, and in other comments submitted to the Agency, several commenters questioned why the current program should be altered. The commenters asserted that MSHA's practice of issuing citations based on the average of multiple measurements has

been in effect since the 1970s, that technology and equipment associated with sampling remain essentially the same, and that substantial progress had been made in lowering respirable dust levels at U.S. coal mines.

As stated in the final notice of joint finding published elsewhere in today's **Federal Register**, significant improvements have in fact been made in the dust sampling process. Although MSHA agrees that progress has been made in reducing average dust concentrations, the SIP inspections clearly showed instances of excessive dust concentrations that would have been masked by the procedure of averaging measurements. Specifically, of the 718 SIP MMUs with valid single, full-shift measurements, 203 MMUs had at least one single, full-shift measurement that was citable, while only 88 MMUs met or exceeded the citation threshold based on the average of multiple measurements. This clearly shows that under the procedure of averaging measurements miners would be at risk of being overexposed and MSHA would be unable to require operators to take corrective actions to protect them.

MSHA believes that a single, full-shift measurement is more likely to detect excessive dust concentrations and thus protect miners than a measurement average across multiple occupations on a single shift or across multiple shifts for a single occupation. MSHA's computer simulation which analyzed data from over 3600 MMU inspections conducted between October 1989 and June 1991, showed that 814 MMUs had citable overexposures based on individual samples, but only 298 of these overexposures were citable on the average of measurements made within the MMU. Subsequent to the SIP, between January 1992 and December 1993, MSHA continued making noncompliance determinations on a single, full-shift measurement, and 74 percent or 488 of the 658 MMUs cited by inspectors as having overexposures were found to be out of compliance based on a single, full-shift measurement, requiring mine operators to take appropriate corrective action. This experience clearly demonstrates that citing on a single, full-shift measurement, as opposed to citing on the average of measurements taken over multiple shifts, impacts miners directly, because it requires mine operators to take more prompt corrective action once an overexposure has been identified. This reduces the risk to miners of continued exposure to dust concentrations above the applicable standard on subsequent shifts.

Furthermore, both NIOSH, in its recently issued criteria document, and the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers recommended the use of single, full-shift measurements for determining compliance. According to the Committee report, issued in October 1996, the MSHA practice of not issuing citations based on single, full-shift samples ''is not protective of miner health, moreover, it is inconsistent with the stated intent of the Coal Act and the Mine Act, which require that exposure be at or below the exposure limit for each shift.''

*B. Why Will MSHA No Longer Rely On Averaged Measurements of Dust Concentrations To Determine Noncompliance?*

MSHA's current enforcement strategy does not provide the optimal level of possible health protection. Basing noncompliance determinations on the average of different occupational measurements dilutes a measurement of high dust exposure with a lower measurement made at a different occupational location. Likewise, averaging measurements obtained for the same occupation over different shifts does not ensure that the concentration of respirable dust is maintained at or below the applicable standard during each shift. Section 202(b)(2) of the Mine Act clearly requires that dust concentrations be maintained at or below the applicable standard ''* * * during each shift to which each miner in the active workings'' is exposed.

Some commenters proposed that MSHA continue to average at least five separate measurements prior to making a noncompliance determination. They stated that abandoning this practice would reduce the accuracy of noncompliance determinations. Specifically, these commenters maintain that the average of dust measurements obtained at the same occupational location on different shifts more accurately represents dust exposure to a miner than a single, full-shift measurement. These commenters favored the retention of existing MSHA policy on the grounds that not averaging measurement results would reduce accuracy to unacceptable levels. Other commenters agreed with MSHA that the averaging of multiple samples dilutes measurements of dust concentration and masks specific instances of overexposure. Some of these commenters stated that averaging distorts not only the estimate of dust concentration applicable to individual shifts, but also biases the estimate of exposure levels over a longer term. According to these commenters, this is because dust control measures and work practices affecting dust concentrations are frequently modified in response to the presence of an MSHA inspector over more than a single shift. These commenters argued that the presence of the MSHA inspector causes the mine operator to be more attentive to dust control than normal.

Section 202(b) of the Mine Act requires each mine operator to ''continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner is exposed'' at or below the applicable standard. The greater the variation in mining conditions from shift to shift, the less likely it is that a multi-shift average will reflect the average dust concentration on any individual shift. For example, during one shift, production may be high and dust concentrations may also be correspondingly high. However, the next shift may experience lower production levels because of equipment breakdowns or because of unusual mining conditions. In addition, when a mine operator knows that the MSHA inspector is present, more attention may be given to ensuring that dust control measures operate effectively, and this may also affect the concentrations of respirable coal mine dust found on that shift. Because of such factors, multi-shift averaging does not improve the accuracy of a noncompliance determination for the sampled shift. Therefore, MSHA is discontinuing its policy of relying on averaged dust concentrations. A more technical discussion of how averaging measurements affects accuracy is given in Appendix A.

*C. Why Has MSHA Decided To Base Noncompliance Determinations Solely on a Single, Full-Shift Measurement?*

One commenter suggested that the new enforcement strategy proposed in MSHA's February 1994 notice, involving noncompliance determinations based on either a single sample or on the average of multiple samples, placed operators in ''double jeopardy'' of being cited—that is, it provided for two separate evaluations of whether the applicable standard has been exceeded. This commenter pointed out that this enforcement strategy would reduce the confidence level at which a noncompliance determination could be made.

Under the MSHA policy proposed in the February 1994 notice, measurements made by an MSHA inspector for

different occupational locations would have been averaged together, not in order to estimate a hypothetical average concentration, but rather to ascertain whether dust concentration was excessive at any of the sampled locations. If the average of measurements across sampling locations exceeded the applicable standard, then at least one of the sampling locations would almost certainly have been out of compliance on the sampled shift. Therefore, the commenter was correct in asserting that noncompliance at each sampling location would have been evaluated twice: once using the single measurement specific to that location; and, if that test did not result in a citation, once again using the average of all available measurements.

MSHA had determined that this strategy was necessary to provide the level of health protection to miners required by the Mine Act, and included this strategy in the proposed policy notice to protect against cases of evident noncompliance that would otherwise go uncited. For example, if five occupational measurements of 2.08, 2.28, 2.31, 2.25, and 2.17 mg/m$^3$ were obtained for an MMU on a 2.0 mg/m$^3$ standard, no enforcement action would be taken if noncompliance is determined solely based on a single, full-shift measurement because no individual measurement meets or exceeds the Citation Threshold Value (CTV), defined in section IV.B. of this notice. On the other hand, averaging the measurements results in an average concentration of 2.22 mg/m$^3$, indicating, with high confidence, that the applicable standard was exceeded.

Although MSHA originally proposed using a combination of both strategies for determining noncompliance, various bodies of data show that such hypothetical occurrences are extremely improbable in practice. For example, MSHA's computer simulation discussed earlier in this notice showed that, between October 1, 1989, and June 30, 1991, 298 MMUs would have been found in noncompliance with the applicable standard based on averaging multiple measurements. All 298 MMUs would also have been found in noncompliance using the single, full-shift measurement citation criteria. According to the data from the SIP, only one noncompliance determination would have been missed if all averaging had been discontinued. Similarly, analysis of more recent inspector sampling data for 1995 indicates that miners' health will not be compromised by discontinuing all measurement averaging. In fact, only one additional case of noncompliance would have been identified using averaging in addition to citing on a single, full-shift measurement. Therefore, MSHA will not continue to use this combination of strategies.

As explained in the final notice of joint finding published elsewhere in today's **Federal Register**, MSHA's improved sampling and analytical method performs in accordance with the NIOSH Accuracy Criterion whenever a single, full-shift measurement is at or above 0.36 mg/m$^3$. The Agency believes that, in accordance with section 202(f) of the Mine Act, this enables MSHA to base noncompliance determinations on a single, full-shift measurement whenever that measurement is at or above 0.36 mg/m$^3$.

## IV. The New Enforcement Policy

### *A. What Is MSHA's New Enforcement Policy?*

MSHA will continue its current dust sampling program as it relates to where and how many samples an inspector collects during a sampling shift. Specifically, MSHA will continue to collect multiple occupational samples for each MMU. The criterion for making noncompliance determinations has been revised and, under the new enforcement policy, MSHA will use a control filter capsule to adjust the resulting weight gain obtained on each exposed filter capsule. Noncompliance determinations will be based solely on the results of individual, full-shift samples, and MSHA will issue a citation whenever noncompliance is demonstrated at a high confidence level. The Agency will no longer rely on multi-locational or multi-shift averaging of measurements to determine noncompliance.

The process by which a violation of the applicable standard will be abated by a mine operator will also remain unchanged. MSHA will consider a violation to be abated when samples collected in accordance with 30 CFR 70.201(d) demonstrate that the average dust concentration in the working environment of the cited occupation is at or below the applicable standard.

When a measurement exceeds the applicable standard but is less than the CTV, noncompliance is not demonstrated at a sufficiently high confidence level to warrant a citation. However, MSHA will consider whether to target the MMU or environment for additional dust sampling. See Appendix B for further discussion of why MSHA believes that such measurements indicate probable overexposure.

### *B. When Will MSHA Issue a Citation for a Violation of the Applicable Standard?*

MSHA will issue a citation for noncompliance when a single, full-shift measurement demonstrates, at a high level of confidence, that the applicable standard has been exceeded. Although MSHA will continue to collect multiple occupational samples for each MMU, the Agency will generally issue only one citation for exceeding the applicable standard on a single shift on any one MMU. However, additional citations may be issued when excessive dust concentrations are detected for occupations exposed to different dust generating sources.

To ensure that citations are issued only when there is a high level of confidence that the applicable standard has been exceeded, MSHA has developed the Citation Threshold Values (CTV) below. Each CTV listed is calculated so that citations are issued only when the single, full-shift measurement demonstrates noncompliance with at least 95 percent confidence. Citing in accordance with the CTV table does not constitute a raising of the applicable standard. Instead, it reflects the need for MSHA to ensure a sufficiently high level of confidence in its noncompliance determinations. Mine operators are still required to implement appropriate controls that will maintain the average concentration of respirable dust at or below the applicable standard on all shifts.

CITATION THRESHOLD VALUES (CTV) FOR CITING VIOLATIONS BASED ON SINGLE, FULL-SHIFT MEASUREMENTS

| Applicable standard (mg/m$^3$) | CTV (mg/m$^3$) |
|---|---|
| 2.0 | 2.33 |
| 1.9 | 2.22 |
| 1.8 | 2.11 |
| 1.7 | 2.00 |
| 1.6 | 1.90 |
| 1.5 | 1.79 |
| 1.4 | 1.68 |
| 1.3 | 1.58 |
| 1.2 | 1.47 |
| 1.1 | 1.36 |
| 1.0 | 1.26 |
| 0.9 | 1.15 |
| 0.8 | 1.05 |
| 0.7 | 0.94 |
| 0.6 | 0.84 |
| 0.5 | 0.74 |
| 0.4 | 0.64 |
| 0.3 | 0.53 |
| 0.2 | 0.43 |

### *C. How Will the CTV Table Be Applied?*

Each single, full-shift measurement used to determine noncompliance will

be the MRE-equivalent dust concentration as calculated and recorded under MSHA's dust data processing system. Every valid measurement will be compared with the CTV corresponding to the applicable standard in effect. If any measurement meets or exceeds that value, a citation will be issued. However, no more than one citation will be issued based on single, full-shift measurements from the same MMU, unless separate citations are warranted for occupations exposed to different dust generating sources. Therefore, when single, full-shift measurements from two or more occupations show dust concentrations in violation of the applicable standard, as illustrated in the examples below, the inspector will determine the dust generation sources and require the operator to sample the environment of the occupation most affected by these sources which is consistent with current practice. In most cases, this will be the working environment of the ''D.O.'' However, if noncompliance is indicated based on measurements from two or more occupations on the same MMU which are exposed to the same dust generating sources, and which do not involve the ''D.O.,'' the occupation with the highest dust concentration will be identified in the citation as the affected working environment. In any case, when an inspector issues a citation for violation of the applicable standard under the new policy, the citation narrative will identify the specific environment or occupation to be sampled by the operator, as well as any other occupation(s) that exceeded the CTV.

Several commenters requested that the application of the CTV table be clarified. The following examples illustrate how inspectors will apply the CTV table and make noncompliance determinations. Suppose that a measurement of 2.41 mg/m$^3$ is obtained for the ''D.O.'', and measurements of 2.34, 1.54, and 1.26 mg/m$^3$, are obtained for three other occupations exposed to the same dust generating sources as the ''D.O.'' during a single shift on an MMU required to comply with an applicable standard of 2.0 mg/m$^3$. Because at least one of the measurements exceeds the 2.33-mg/m$^3$ CTV (the citation value when the applicable standard is 2.0 mg/m$^3$), a citation will be issued for exceeding the applicable standard on the shift sampled. Even though two individual measurements (2.41 and 2.34 mg/m$^3$) exceeded the CTV, one of which is on the ''D.O.,'' only one citation will be issued, specifying the ''D.O.'' as the affected working environment because all occupations were exposed to the same dust generating sources.

Suppose now that in the previous example the 2.34-mg/m$^3$ measurement was obtained for a roof bolter, and the MMU was ventilated using a double-split ventilation system. This means that the roof bolter, working on a separate split of air from that of the continuous miner, is exposed to a different dust generating source than the ''D.O.'' and, therefore, may not be adequately protected by dust controls implemented for the ''D.O.'' Consequently, two citations would be issued.

As another example, consider an MMU with measurements of 2.14, 1.92, 1.82, 1.25, and 1.12 mg/m$^3$. Although none of these measurements meet the CTV, there is reason to believe that the MMU is out of compliance, since one of the measurements exceeds the applicable standard. However, because there is a small chance that the measurement exceeded the applicable standard because of measurement error, a citation would not be issued. As discussed elsewhere in this notice, additional samples would be necessary to verify the adequacy of the control measures under current operating conditions. Therefore, MSHA would select this MMU for additional sampling. As discussed in Appendix B, even if the first measurement were 1.90 mg/m$^3$ instead of 2.14 mg/m$^3$, because of measurement error this would not demonstrate that the mine atmosphere sampled was in compliance. To confirm that control measures are adequate, MSHA would need to take additional samples.

*D. What Is the Potential for a Citation To Be Issued Due To Measurement Error?*

Some commenters expressed concern that noncompliance determinations based on single, full-shift measurements would result in an unacceptable number of erroneous citations due to measurement error. These commenters expected that MSHA's new enforcement policy would result in numerous erroneous citations.

Based on the analysis in Appendix C, MSHA has concluded that, because of the large ''margin of error'' separating each CTV from the corresponding applicable standard, use of the CTV table provides ample protection against erroneous citations. For exceptionally well-controlled environments (e.g., Case 2 of Appendix C), the probability that any given citation is erroneous will be substantially less than 5 percent. This probability is even smaller in environments which are not well controlled (e.g., Case 3 of Appendix C). Therefore, any citation issued in accordance with the CTV table will be much more likely the result of excessive dust concentration rather than measurement error.

*E. What Will Happen When the Evidence Is Insufficient To Warrant a Citation?*

If the appropriate CTV is not met or exceeded, MSHA will not issue a citation. As discussed earlier, this does not mean that the sampled environment is necessarily in compliance. Although in certain cases there may be insufficient evidence to demonstrate noncompliance, the measurement may nonetheless indicate a possible overexposure. MSHA intends to focus on cases of measurements above the applicable standard but below the CTV, with special emphasis being directed to working environments required to comply with applicable standards below 2.0 mg/m$^3$.

If follow-up measurements do not warrant a citation but suggest that the dust control measures in use may be inadequate, MSHA may initiate a thorough review of the dust control parameters stipulated in the mine operator's approved ventilation or respirable dust control plan to determine whether the parameters should be upgraded.

## V. Consequences of the Use of the CTVs in Conjunction With the Joint MSHA/NIOSH Finding

*A. What is the Impact of MSHA's New Enforcement Strategy As Applied Under the MSHA/NIOSH Joint Finding?*

The Agency believes that the application of the CTVs in conjunction with the MSHA/NIOSH joint notice of finding published elsewhere in today's **Federal Register** to single, full-shift samples collected by MSHA inspectors provides for more efficient detection of noncompliance by identifying and requiring abatement of individual instances of overexposure which meet the CTVs. While this issue is more appropriately addressed in the MSHA/NIOSH joint notice, the rationale for this conclusion bears repeating here.

The Mine Act is clear in its intent that no miner should be exposed to respirable coal mine dust in excess of the applicable standard on any shift. The effect of the joint finding and the new enforcement strategy set forth here creates incentives for mine operators to control dust exposure on a continuing basis to minimize the chance of being found in noncompliance during any MSHA sampling inspection. To prevent the possibility of any inspector single,

full-shift measurement exceeding the CTV and resulting in a violation, mine operators will be more likely to keep dust concentrations at or below the applicable standard, thereby providing better protection to miners from overexposures. This becomes evident upon closer examination of the inspector sampling data from the period when noncompliance determinations were based on single, full-shift measurements.

MSHA reviewed inspector MMU sampling results for FY 1992, the first full year during which noncompliance determinations were based on single, full-shift measurements, and FY 1993, the last year that the Agency issued citations based on single, full-shift measurements. This review showed a decline in the number of ''D.O.'' and nondesignated occupation samples exceeding 2.0 mg/m$^3$, from 16 percent and 10 percent in FY 1992 to 13 percent and 7 percent, respectively, in FY 1993, suggesting that operators were better able to maintain dust concentrations below the applicable standard. MSHA also conducted a computer simulation using these data which showed that one of every four MMU sampling days in FY 1992 would have been found in noncompliance based on a single, full-shift measurement, compared to one in five MMU sampling days in FY 1993.

Under the previous enforcement strategy, which utilized averaging, inspectors cited violations of the applicable standard on the average of multiple measurements taken on a single shift or on different shifts or days. Consequently, dust concentrations could be excessive for some occupations or work locations, but corrective action would not be required so long as the average of the measurements did not exceed the applicable standard. For example, averaging occupational measurements of 3.2, 2.4, 1.5, 1.3 and 1.0 mg/m$^3$ results in an average concentration of 1.8 mg/m$^3$ for the sampled MMU where the applicable standard is 2.0 mg/m$^3$. Despite the fact that two of the measurements demonstrate noncompliance with a high degree of confidence, corrective action would not have been required because the average concentration was below the applicable standard.

As described in this notice and in conjunction with the MSHA/NIOSH joint notice, under the new enforcement policy, whenever an individual measurement indicates noncompliance (with a high level of confidence), the mine operator will be required to take corrective action to lower the concentration of respirable dust to comply with the applicable standard.

Some commenters expressed concern that MSHA would fail to cite some instances of noncompliance because of the high level of confidence required for a citation. MSHA believes that the new enforcement strategy as applied in conjunction with the finding of the MSHA/NIOSH joint notice will reduce the chances of failing to cite cases of noncompliance as compared to the previous policy of measurement averaging, while at the same time ensuring that noncompliance is cited only when there is a high degree of confidence that the applicable standard has been exceeded. According to the inspector sampling inspections conducted in 1995, only 132 MMUs were found to be in violation of the applicable standard and cited under the previous enforcement policy of measurement averaging, compared to 545 MMUs that would have been citable under the new enforcement policy in conjunction with the joint notice of finding using single, full-shift measurements. This clearly demonstrates that the new enforcement policy, in conjunction with the joint notice, will not compromise miners' health but would, instead, have identified 413 additional instances of overexposure that would have gone unaddressed under the previous policy of measurement averaging.

Some commenters proposed that miners would be even more protected if noncompliance was cited whenever any single, full-shift measurement exceeded the applicable standard by any amount. That is, it was recommended that MSHA not make any allowance for potential measurement errors. MSHA has considered this recommendation but has not adopted it in the final policy because it could result in citations being issued where compliance with the applicable standard is more likely than not. If the mine environment is sufficiently well controlled, it is more likely that a particular measurement exceeds the applicable standard, but not the CTV, due to measurement error rather than due to excessive dust concentration. Furthermore, the rationale used by these commenters to justify their proposed citation criterion breaks down when, as in the case of multiple samples taken during a given shift in the same MMU, more than one measurement is made for a single noncompliance determination. Appendix D addresses technical details relating to this issue.

Some commenters stated that MSHA's new citation criteria implemented in conjunction with the joint notice will not improve respirable dust levels in the environment, but will simply result in MSHA issuing more citations to mine operators. In these commenters view, this will foster a continuation of the adversarial relationship that developed between mine operators and MSHA over allegations of widespread tampering with respirable dust samples.

MSHA firmly believes that basing noncompliance determinations on a single, full-shift measurement will improve working conditions for miners because it will cause mine operators to either implement and maintain more effective dust controls to minimize the chance of being found in noncompliance by an MSHA inspector, or take corrective action sooner to lower dust concentrations that are shown, with high confidence, to be in excess of the applicable standard. The effect of this new enforcement policy in conjunction with the MSHA/NIOSH joint notice will be remedial in nature because it will address instances of overexposure that are not addressed under the current policy of measurement averaging. For example, between January 1992 and December 1993, MSHA continued the practice established under the SIP of making noncompliance determinations based on single, full-shift measurements which demonstrated, with high confidence, that the applicable standard was exceeded, and on the average of multiple measurements. During this period, MSHA inspectors issued a total of 658 citations at MMUs. The majority of these citations (488) were issued based on the result of a single, full-shift measurement. Under the existing enforcement policy, such individual instances of noncompliance would not be cited and corrected, but instead would be factored into an average that could be at or below the applicable standard, resulting in no violation and no corrective action taken by the mine operator.

Some commenters also contended that the joint notice of finding, and this notice of policy, are solely for the administrative convenience of MSHA's mine inspectors. The commenters stated that allowing inspectors to make noncompliance determinations on the basis of a single, full-shift measurement will eliminate the need for inspectors to sample on successive days, as is sometimes required under existing policy.

MSHA recognizes that there are administrative advantages related to the adoption of this new enforcement policy and the joint notice of finding. By eliminating the need to sample on subsequent days, the Agency will be able to utilize its resources more efficiently. That is, inspectors will not

be required to return to a mine to conduct additional dust sampling, but the Agency will be able to redirect its resources to other safety and health concerns. This result is consistent with the Mine Act's objective of protecting miner safety and health. While administrative convenience may be a side benefit of this new enforcement policy in conjunction with the MSHA/NIOSH joint notice, the primary reason for implementing it is to achieve the intent of Congress that no miner shall be exposed to dust concentrations above the applicable standard on any shift.

*B. What is the Impact of the New Policy on Ventilation Plans?*

A number of commenters expressed concern that issuing citations on the result of a single, full-shift measurement will cause MSHA to require carefully developed ventilation plans to be modified needlessly as part of the abatement process. These commenters view such frequent revisions as costly, disruptive and unnecessary. They contend that such revisions, if required, would be made on the basis of incomplete or invalid information, and that they would not necessarily decrease a miner's dust exposure. Some commenters believed that some inspectors would mandate specific changes without realistically evaluating their effectiveness, while other inspectors would not allow operators to make their own adjustments to the plans, or provide an opportunity for them to evaluate the changes in a rational manner.

When a citation is issued based on a single measurement, this can indicate that the control measures in use may no longer be adequate to maintain the environment within the applicable standard. MSHA will consequently review the adequacy of the ventilation plan under the current operating conditions, and will consider the results of operator bimonthly sampling as well as operator compliance with the approved ventilation plan parameters. Under this approach MSHA would require plan revisions only after an examination of all factors has demonstrated that changes are necessary to protect miner health. This enforcement strategy should minimize unnecessary changes to plans that have been determined to provide adequate controls.

MSHA believes that the primary focus of the federal dust program is to minimize miners' overexposures to respirable dust through the application of appropriate environmental controls, which are stipulated in the operator's approved mine ventilation plan. After these controls are evaluated and shown to be effective under typical mining conditions, if properly maintained, they should provide reasonable assurance that no miner will be overexposed. Therefore, one of the objectives of MSHA's dust sampling is to verify that the controls stipulated in ventilation plans continue to adequately control dust concentrations under existing operating conditions. In conjunction with these sampling and other inspections an inspector checks and measures the dust control parameters early in the shift to determine whether the approved ventilation plan is being followed. A mine operator's failure to follow the parameters stipulated in the plan will result in the issuance of a citation, which requires immediate corrective action to abate the violation. The type of corrective actions taken to abate plan violations can vary from unplugging clogged water sprays to increasing the amount of ventilating air delivered to the MMU. However, mere correction of these deficiencies to ensure that the ''status quo'' of the plan is being maintained may not always be effective in controlling miners' exposure to respirable dust. The required plan parameters may no longer be effective in maintaining compliance, and may need to be upgraded. The determination of how the plan should be revised is complicated by the fact that, generally, most approved plans do not incorporate all the control measures that were in place when MSHA sampled. Consequently, most plan revisions have simply incorporated into the plan only those dust controls that were in use when MSHA sampled, rather than requiring significant upgrading of the plan. As an example, an MSHA inspector might require an increase in the water pressure stipulated in the plan from 75 pounds per square inch (psi) to 125 psi to reflect the 125 psi that the MSHA inspector actually measured. If, instead, the operator was required to significantly increase the quantity of air being delivered to the MMU, this would be considered a major upgrade. MSHA recognizes that a determination of noncompliance should not automatically necessitate the revision of a plan. Instead, it should result in a thorough review of the plan's continued adequacy.

When an operator of an underground mine is cited for excessive dust, 30 CFR 70.201(d) requires the operator to ''take corrective action to lower the concentration of respirable dust to within the permissible concentration.'' When the citation is based on MSHA samples, the inspector may request that the operator describe what type of corrective action will be taken. The inspector then determines if the corrective action is appropriate. If it is not appropriate in the specific situation, the inspector may either suggest or require other corrective action or control measures. Operators are provided with the opportunity to make adjustments to their dust controls and to evaluate their effectiveness in a rational manner during the time for abatement set by the inspector, which is based on the complexity of the problem, availability of controls, and the types of changes the operator intends to make. This abatement time may be extended by the inspector based on the operator's performance in reducing the dust concentration in the affected area of the mine. Typically, the operator then demonstrates, through sampling, that the underlying condition or conditions causing the violation have been corrected. Failure to take corrective action prior to sampling that shows continuing noncompliance may lead to the issuance of a withdrawal order. However, this occurs infrequently.

*C. Will the New Enforcement Policy Increase Citations on Individual Shifts, Even if the So-Called ''Average Concentration Over the Longer Term'' Meets the Standard?*

Some commenters claimed that even when the average dust concentration is well below the applicable standard, normal variability from shift to shift results in a substantial fraction of shifts for which the dust standard is exceeded. According to these commenters, a determination of noncompliance is warranted only if the average dust concentration to which a miner is exposed exceeds the standard over a period of time greater than a single shift, such as a bimonthly sampling period, a year, or a miner's working lifetime. Therefore, they consider it ''unfair'' to cite operators for exceeding the applicable standard on individual shifts, so long as the average over the longer term meets the applicable standard. For example, based on historical sampling data provided by one commenter, the commenter concluded that, ''* * * there is at least a 1 in 6 or 17% probability that any single sample can show potential overexposure when one does not exist.'' These commenters contend that use of the CTV to determine noncompliance, based on one sample collected on a single shift, will substantially increase the frequency of ''unfair'' citations, compared to existing MSHA policy.

MSHA believes that such comments reflect a misunderstanding of both the

requirements of the Mine Act and MSHA's longstanding policy with respect to single, full-shift noncompliance determinations. It should be recognized that MSHA has been basing noncompliance determinations on the average of multiple occupation measurements obtained on the same shift since 1975. In addition, some of the commenters confused the average dust concentration over the course of an individual shift with the average dust concentration over some longer term. The joint notice of finding issued by the Secretaries of Labor and HHS addresses this issue. Since the Mine Act requires that dust concentration be kept continuously at or below the applicable standard on every shift, it is appropriate to cite noncompliance when any single, full-shift measurement at a particular location demonstrates, with high confidence, that the applicable standard has been exceeded on an individual shift.

Section 201(b) of the Mine Act mandates that MSHA ensure ''to the greatest extent possible, that the working conditions in each underground coal mine are sufficiently free of respirable dust concentrations * * * to permit each miner the opportunity to work underground during the entire period of his adult life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such a period.'' Since neither past nor future exposure levels can be assumed for any miner, MSHA's enforcement strategy must be to limit the exposure on every shift as intended by the Mine Act.

*D. Will There Be Any Changes in Operator Bimonthly Sampling?*

Several commenters were unclear about the impact of the joint MSHA/NIOSH finding and this policy on operator sampling for compliance and for abatement of violations. One commenter suggested that 30 CFR 70.207(a) be revised to allow the operator to submit one single, full-shift sample, instead of five samples every bimonthly period as currently required. Another commenter suggested that MSHA assume responsibility for dust sampling from the mine operators.

MSHA has previously noted that the change in its enforcement policy announced through this final notice affects only how it will determine noncompliance based on measurements obtained by MSHA inspectors. There will be no change in how MSHA evaluates operator-collected respirable dust samples for compliance. Under the regulations currently in effect, the Agency will continue to average operator samples taken on multiple shifts or days to make noncompliance determinations. MSHA is committed to revising procedures with respect to operator-collected respirable dust samples through the rulemaking process for consistency with this final finding.

Several commenters expressed concerns about the credibility of the operator sampling program because of alleged operator tampering with respirable dust samples and alleged operator manipulation of mine conditions during dust sampling periods. As a result, these commenters felt that mine operators should no longer have responsibility for sampling because their sampling results are unreliable. Another commenter expressed support for the Agency to compel coal mine operators to comply with existing dust standards. Another commenter voiced concern that a mine operator could be wrongly cited due to the loss or mishandling of a single, full-shift sample by MSHA, and claimed that such occurrences had happened in the past. Some commenters believe that if noncompliance can be determined based on a single, full-shift sample, an operator should be allowed to abate a citation with a single, full-shift sample, particularly if the operator has recently demonstrated compliance through bimonthly samples. Another commenter questioned the impact of the proposed program on the operator's program, specifically, whether MSHA would require each of the abatement samples to meet the single, full-shift sample citation threshold values, in addition to meeting the dust standard based on the average of five abatement samples.

Issues concerning operator sampling are not germane to this enforcement policy notice, which concerns only the use of samples collected by MSHA inspectors. The changes set forth in this final notice only address how MSHA will determine noncompliance when sampling is conducted by federal mine inspectors. There is no change in how MSHA evaluates either operator-collected bimonthly samples or samples taken to abate a dust citation. MSHA is committed to revising any procedures with respect to the operator program through the rulemaking process for consistency with this final finding.

Concerning the credibility of the operator sampling program, MSHA recognizes that there have been instances of abuse under the current operator sampling program. The Task Group found that the majority of operators do not engage in such conduct. MSHA will continue to monitor the operator sampling program, increase the frequency of inspector sampling, and target problem mines for additional inspections, as appropriate.

MSHA processes over 80,000 samples annually and it is not unrealistic to expect some samples to be either lost in the mail or accidentally misplaced. MSHA's experience of processing more than 7 million dust samples since 1970 indicates that this occurs infrequently. In the event a sample is lost, the mine operator is afforded ample opportunity to submit a replacement sample. If a citation is issued due to the operator's failure to submit the required number of samples, the affected operator can present evidence that the required number of samples had been submitted and request that MSHA vacate the citation.

*E. How Can MSHA Base a Noncompliance Determination on a Single, Full-Shift Sample, When Five Samples Are Required in Operator Bimonthly Sampling?*

Once a finding has been made that a single, full-shift measurement will accurately represent atmospheric conditions to which a miner is exposed during such shift, MSHA is bound by the terms of the Mine Act to make noncompliance determinations based on single, full-shift measurements. No regulatory action is required to implement this change in MSHA's dust sampling program. On the other hand, the present regulatory scheme for operator sampling was developed based on noncompliance determinations being made by averaging the results of multiple samples over five successive shifts or days. In order for MSHA to incorporate the single, full-shift sample concept into the operator sampling program, the Agency must revise the operator sampling regulations through notice and comment rulemaking.

*F. Do the New Citation Criteria Have any Impact on Permissible Exposure Limits?*

Some commenters contended that a policy of citing in accordance with the CTV table, rather than citing whenever a measurement exceeds the applicable standard, effectively increases the allowable dust concentration limit. Other commenters stated that the enforcement of the applicable standard as a limit on each shift, rather than as a limit on the average concentration over some longer time period, effectively reduces the standard.

Citing in accordance with the stated CTV neither increases nor decreases the dust standard. Operators are required to maintain compliance with the

applicable standard at all times. MSHA's citing of noncompliance only when there is high confidence that the applicable standard has been exceeded does not increase the permissible concentration limit. Again, mine operators must maintain compliance with the applicable standard. MSHA requires that dust controls maintain dust concentrations at or below the applicable standard on all shifts, not merely at or below the CTV. It is also MSHA's intent under this new enforcement policy that if a measurement exceeds the applicable standard by an amount insufficient to warrant citation—that is, the level does not meet or exceed the CTV—MSHA will target that mine or area for additional sampling to ensure that dust controls are adequate.

Those commenters who stated that applying the applicable standard to each shift will effectively reduce the respirable dust standard overlooked the fact that, since 1975, MSHA has taken enforcement action based on average of measurements obtained for different occupations during a single shift. This new enforcement policy does not change MSHA's interpretation of section 202(b) of the Mine Act that dust concentrations be maintained at or below the applicable standard on each shift. The new enforcement policy merely reflects a change in the technical criteria used to cite violations of the applicable dust standard.

*Appendix A—The Effects of Averaging Dust Concentration Measurements*

MSHA's measurement objective in collecting a dust sample is to determine the average dust concentration at the sampling location on the shift sampled. As discussed in the joint notice of finding published elsewhere in today's **Federal Register**, a single, full-shift measurement can accurately represent the average full-shift dust concentration being measured. Nevertheless, because of sampling and analytical errors inherent in even the most accurate measurement process, the true value of the average dust concentration on the sampled shift can never be known with complete certainty. However accurate the representation, a measurement can provide only an estimate of the true dust concentration. Some commenters contended that MSHA should not rely on single samples for making noncompliance determinations, because an average of results from multiple samples would estimate the true dust concentration more accurately than any single measurement.

Contrary to the views expressed by these commenters, averaging a number of measurements does not necessarily improve the accuracy of an estimation procedure. Consider, for example, an archer aiming at targets mounted at random and possibly overlapping positions on a long partition. Each arrow might be aimed at a different target. Suppose that an observer, on the opposite side of the partition from the archer, cannot see the targets but must estimate the position of each bull's eye by locating protruding arrowheads.

Each protruding arrowhead provides a measurement of where some bull's eye is located. If two arrowheads are found on opposite ends of the partition, averaging the positions of these two arrowheads would not be a good way of determining where any real target is located. To estimate the location of an actual target, it would generally be preferable to use the position of a single arrow. The average would represent nothing more than a ''phantom'' target somewhere near the center, where the archer probably did not aim on either shot and where no target may even exist.

The archery example can be extended to illustrate conditions under which averaging dust concentration measurements does or does not improve accuracy. If each arrowhead is taken to represent a full-shift dust sample, then the true average dust concentration at the sampling location on a given shift can be identified with the location of the bull's eye at which the corresponding arrow was aimed. The *accuracy* of a measurement refers to how closely the measurement can be expected to come to the quantity being measured. Statistically, accuracy is the combination of two distinct concepts: *precision,* which pertains to the consistency or variability of replicated measurements of exactly the same quantity; and *bias,* which pertains to the average amount by which these replicated measurements deviate from the quantity being measured. Bias and precision are equally important components of measurement accuracy.

To illustrate, arrows aimed at the same target might consistently hit a sector on the lower right side of the bull's eye. The protruding arrowheads would provide more or less precise measurements of where the bull's eye was located, depending on how tightly they were clustered; but they would all be biased to the lower right. On the other hand, the arrows might be distributed randomly around the center of the bull's eye, and hence unbiased, but spread far out all over the target. The protruding arrowheads would then provide unbiased but relatively imprecise measurements.

More complicated situations can easily be envisioned. Arrows aimed at a second target would provide biased measurements relative to the first target. Alternatively, if the archer always aims at the same target, the first shot in a given session might tend to hit near the center, with successive shots tending to fall off further and further to the lower right as the archer's arm tires; or shots might progressively improve, as the archer adjusts aim in response to prior results.

Averaging reduces the effects of random errors in the archer's aim, thereby increasing precision in the estimation procedure. If the archer always aims at the same target and is equally adept on every shot (i.e., if the arrowheads are all randomly and identically distributed around a fixed point), then averaging improves the estimate's precision without introducing any bias. Averaging in such cases provides a more accurate method of estimating the bull's eye location than reliance on any single arrowhead. If, however, the archer intentionally or unintentionally switches targets, or if the archer's aim progressively deteriorates, then averaging can introduce or increase bias in the estimate. If the gain in precision outweighs this increase in bias, then averaging several independent measurements may still improve accuracy. However, averaging can also introduce a bias large enough to offset or even surpass the improvement in precision. In such cases, the average position of several arrowheads can be expected to locate the bull's eye *less* accurately than the position of a single arrowhead.

I. Multi-Locational Averaging

Some commenters opposed MSHA's use of a single, full-shift measurement for enforcement purposes, claiming that determinations based on such measurements would be less accurate than those made under MSHA's existing enforcement policy of averaging multiple measurements taken on an MMU. There are two distinctly different types of multi-locational measurement averages that could theoretically be compiled on a given shift: (1) the average might combine measurements taken for different occupational locations and (2) the average might combine measurements all taken for the same occupational location. For MMUs, the averages used in MSHA's sampling program usually involve measurements taken for different occupational locations on the same shift. These are averages of the first type. MSHA's sampling program has never utilized

averages of the second type. Therefore, those commenters who claimed that reliance on a single, full-shift measurement would reduce the accuracy of noncompliance determinations, as compared to MSHA's existing enforcement policy, are implicitly claiming that accuracy is increased by averaging across different occupational locations.

Averaging measurements obtained from different occupational locations on an MMU is like averaging together the positions of arrows aimed at different targets. The average of such measurements is an artificial, mathematical construct that does not correspond to the dust concentration for any actual occupational location. Therefore, this type of averaging introduces a bias proportional to the degree of variability in actual dust concentration at the various locations averaged.

The gain in precision that results from averaging measurements taken at different locations outweighs this bias only if variability from location to location is smaller than variability in measurement error. However, commenters opposed to MSHA's use of single, full-shift measurements for enforcement purposes argued that this is not generally the case and even submitted data and statistical analyses in support of this position. Commenters in favor of noncompliance determinations based on a single, full-shift measurement agreed that variability in dust concentration is extensive for different occupational locations and argued that MSHA's existing policy of measurement averaging is not sufficiently protective of miners working at the dustiest locations.

Since an average of the first type combines measurement from the dustiest location with measurements from less dusty locations, it must always fall below the best available estimate of dust concentration at the dustiest location. In effect, averaging across different occupational locations dilutes the dust concentration observed for the most highly exposed occupations or dustiest work positions. Therefore, such averaging results in a systematic bias against detecting excessive dust concentrations for those miners at greatest risk of overexposure.

A somewhat better case can be made for the second type of multi-locational averaging, which combines measurements obtained on the same shift from a single occupational location. As some commenters pointed out, however, there is ample evidence that spatial variability in dust concentration, even within relatively small areas, is frequently much larger than variability due to measurement error. Therefore, the same kind of bias introduced by averaging across occupational locations would also arise, but on a lesser scale, if the average measurement within a relatively small radius were used to represent dust concentration at every point in the atmosphere to which a miner is exposed. A miner is potentially exposed to the atmospheric conditions at any valid sampling location. Consistent with the Mine Act and implementing regulations, MSHA's enforcement strategy is to limit atmospheric dust concentration wherever miners normally work or travel. Therefore, the more spatial variability in dust concentration there is within the work environment, the less appropriate it is to use measurement averaging to enforce the applicable standard by averaging measurements obtained at different sampling locations.

Some of the comments implied that instead of measuring average dust concentration at a specific sampling location, MSHA's objective should be to estimate the average dust concentration throughout a miner's ''breathing zone'' or other area near a miner. If estimating average dust concentration throughout some zone were really the objective of MSHA's enforcement strategy, then averaging measurements made at random points within the zone would improve precision of the estimate without introducing a bias. This type of averaging, however, has never been employed in either the MSHA or operator dust sampling programs. MSHA's current policy of averaging measurements obtained from different zones does not address spatial variability in the area immediately surrounding a sampler unit. Therefore, even if averaging measurements from within a zone were somehow beneficial, this would not demonstrate that MSHA's existing enforcement policy is more reliable than the new policy of basing noncompliance on a single, full-shift measurement.

Furthermore, if MSHA's objective were really to estimate average dust concentration throughout some specified zone on a given shift, then it would be necessary to obtain far more than five simultaneous measurements within the zone. This is not only because of potentially large local differences in dust concentration. In order to use such measurements for enforcement purposes, variability in dust concentration within the sampled area would have to be estimated along with the average dust concentration itself. As some commenters correctly pointed out, doing this in a statistically valid way would generally require at least twenty to thirty measurements. One of these commenters also pointed out that such an estimate, based on even this many measurements in the same zone, could be regarded as accurate only under certain questionable assumptions about the distribution of dust concentrations. This commenter calculated that hundreds of measurements would be required in order to avoid these tenuous assumptions. Clearly, this shows that the objective of estimating average dust concentration throughout a zone is not consistent with any viable enforcement strategy to limit dust concentration on each shift in the highly heterogeneous and dynamic mining environment. The large number of measurements required to accurately characterize dust concentration over even a small area merely demonstrates why it is not feasible to base enforcement decisions on estimated atmospheric conditions beyond the sampling location.

MSHA recognizes that a single, full-shift measurement will not provide an accurate estimate of average dust concentration anywhere beyond the sampling location. The Mine Act, however, does not require MSHA to estimate average dust concentration at locations that are not sampled or to estimate dust concentration averaged over any zone or region of the mine, and doing so is not part of MSHA's enforcement program. Instead, MSHA's enforcement strategy is to ensure that a miner will not be exposed to excessive dust wherever he/she normally works or travels. This is accomplished by maintaining the average dust concentration at each valid sampling location at or below the applicable standard during each shift.

II. Multi-Shift Averaging

Some commenters maintained that in order to reduce the risk of erroneous noncompliance determinations, MSHA should average measurements obtained from the same occupation on different shifts. These commenters contended that the average of measurements from several shifts represents the average dust concentration to which a miner is exposed more accurately than a single, full-shift measurement. Other commenters, who favored noncompliance determinations based on single, full-shift measurements, claimed that conditions are sometimes manipulated so as to produce unusually low dust concentrations on some of the sampled shifts. These commenters suggested that, due to these

unrepresentative shifts, multi-shift averaging can yield unrealistically low estimates of the dust concentration to which a miner is typically exposed. Some of these commenters also argued that the Mine Act requires the dust concentration to be regulated on each shift, and that multi-shift averaging is inherently misleading in detecting excessive dust concentration on an individual shift.

Those advocating multi-shift averaging generally assumed that a noncompliance determination involves estimating a miner's average dust exposure over a period longer than an individual shift. This assumption is flawed because section 202(b) of the Mine Act specifies that each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift at or below the applicable standard. Some of those advocating multi-shift averaging, however, suggested that MSHA should average measurements obtained on different shifts even if the quantity of interest is dust concentration on an individual shift. These commenters argued that averaging smooths out the effects of measurement errors, and that therefore the average over several shifts would represent dust concentration on each shift more accurately than the corresponding individual, full-shift measurement.

The Secretary recognizes that there are circumstances, not experienced in mining environments, under which averaging across shifts could improve the accuracy of an estimate for an individual shift. Just as averaging the positions of arrows aimed at nearly coinciding targets might better locate the bull's eye than the position of any individual arrow, the gain in precision obtained by averaging dust concentrations observed on different shifts could, under analogous circumstances, outweigh the bias introduced by using the average to estimate dust concentration for an individual shift. This would be the case, however, only if variability in dust concentration among shifts were small compared to variability due to measurement imprecision. It would do no good to average the location of arrows aimed at different targets unless the targets were at nearly identical locations.

To the contrary, several commenters pointed out that variability in dust concentration from shift to shift tends to be much larger than variability due to measurement error and introduced evidence in support of this observation. Measurements on different shifts are like arrows aimed at widely divergent targets. The more that conditions vary, for any reason, from shift to shift, the more bias is introduced by using a multi-shift average to represent dust concentration for any individual shift. Under these circumstances, any improvement in precision to be gained by simply averaging results is small compared to the bias introduced by such averaging. Therefore, the Secretary has concluded that MSHA's existing practice of averaging measurements collected on different shifts does not improve accuracy in estimating dust concentration to which a miner is exposed on any individual shift. To paraphrase one commenter, averaging Monday's exposure measurement with Tuesday's does not improve the estimate of Monday's average dust concentration.

Some commenters argued that since the risk of pneumoconiosis depends on cumulative exposure, MSHA's objective should be to estimate the dust concentration to which a miner is typically exposed and to identify cases of excessive dust concentration over a longer term than a single shift. Other commenters claimed that a multi-shift average does not provide a good estimate of either typical dust concentrations or exposures over the longer term. These commenters claimed that different shifts are not equally representative of the usual atmospheric conditions to which miners are exposed, implying that the average of measurements made on different shifts of a multi-day MSHA inspection tends to systematically underestimate typical dust concentrations.

The Secretary interprets section 202(b) of the Mine Act as requiring that dust concentrations be kept at or below the applicable standard on each and every shift. Nevertheless, the Secretary recognizes that, under certain conditions, the average of measurements from multiple shifts can be a better estimate of ''typical'' atmospheric conditions than a single measurement. This applies, however, only if the sampled shifts comprise a random or representative selection of shifts from whatever longer term may be under consideration. As shown below, evidence to the contrary exists, supporting those commenters who maintained that measurements collected over several days of a multi-day MSHA inspections do not meet this requirement. Therefore, the Secretary has concluded that averaging such measurements is likely to be misleading even for the purpose of estimating dust concentrations to which miners are typically exposed.

Whether the objective is to measure average dust concentration on an individual shift or to estimate dust concentration typical of a longer term, the arguments presented for averaging across shifts all depend on the assumption that every shift sampled during an MSHA inspection provides an unbiased representation of dust exposure over the time period of interest.[1] To check this assumption, MSHA performed a statistical analysis of multi-shift MSHA inspections carried out prior to the SIP. This analysis, placed into the record in September 1994, examined the pattern of dust concentrations measured over the course of these multi-shift inspections and compared results from the final shift with results from a subsequent single-shift sampling inspection [1].

The analysis found that dust concentrations measured on different shifts of the same MSHA inspection were not randomly distributed. The later samples tended to show significantly lower results than earlier samples, indicating that dust concentrations on later shifts of a single inspection may decline in response to the presence of an inspector. Furthermore, the analysis provided evidence that the reduction in dust concentration tends to be reversed after the inspection is terminated. These two results led to the conclusion that averaging dust concentrations measured on different shifts of a multi-day MSHA inspection introduces a bias toward unrealistically low dust concentrations.

One commenter questioned the validity of this analysis, stating that ''there is absolutely no basis in the * * * report for the assertion that the trend is reversed after the inspection is terminated.'' This commenter apparently overlooked Table 3 of the report. That table shows a statistically significant reversal at those mine entities included in the analysis that were subsequently inspected under MSHA's SIP. Dust concentrations measured at these mine entities had declined significantly between the first and last days of the multi-shift inspection. It was primarily to address the commenter's implication that these reductions reflected permanent ''adjustments in dust control measures'' that the analysis included a comparison with the subsequent SIP inspection. An increase, representing a reversal of the previous trend, was observed on the single shift of the subsequent

[1] Technically, the assumption is that dust concentrations on all shifts sampled are independently and identically distributed around the quantity being estimated.

inspection, relative to the dust concentration measured on the final shift of the previous multi-shift inspec tion. This reversal was found to be ''statistically significant at a confidence level of more than 99.99 percent.''

The same commenter also stated that MSHA ''* * * fails to address the systematic [selection] bias of the study. MSHA only does multiple day sampling when the initial results are higher, but not out of compliance.'' It is true that in order to be selected for revisitation, a mine entity must have shown relatively high concentrations on the first shift—though not, in the case of an MMU, so high as to warrant a citation on first shift. Since no experimental data were available on mine entities randomly selected to receive multi-shift inspections, the only cases in which patterns over the course of a multi-shift inspection could be examined were cases selected for multi-shift inspection under these criteria.

Although the impact of the selection criteria was not explicitly addressed, it was recognized that entities selected for multi-day inspections do not constitute a random selection of mine entities. This recognition motivated, in part, the report's comparison of the final shift measurement to the dust concentration measured during a subsequent single-shift inspection. The magnitude of the average reversal indicates that most of the reduction observed over the course of the multi-shift inspection cannot be attributed to the selection criteria. Furthermore, it was not only mine entities with relatively low dust concentration measurements that were left out of the study group. Mine entities with the highest dust concentration measurements were immediately cited based on the average of measurements taken and excluded from the group subjected to multi-shift dust inspections. Therefore, the effect on the analysis of selecting mine entities with relatively high initial dust concentration measurements was largely offset by the effect of excluding those entities with even higher initial measurements. In any event, the magnitude of the average reduction between first and last shifts of a multi-shift inspection was significantly greater than what can be explained by selection for revisitation due to measurement error on the first shift sampled.

The assumption that multiple shifts sampled during a single MSHA inspection are equally representative is clearly violated if, as some commenters alleged, operating conditions are deliberately altered after the first shift in response to the continued presence of an MSHA inspector and then changed back after the inspector leaves. However, if samples are collected on successive or otherwise systematically determined shifts or days, the assumption can also be violated by changes arising as part of the normal mining cycle. As one commenter pointed out, multi-shift averaging within a single MSHA inspection potentially introduces biases typical of ''campaign sampling,'' in which observations of a dynamic process are clustered together over a relatively narrow time span. In order to construct an unbiased, multi-shift average for each phase of mining activity, it would be necessary to collect samples from several shifts operating under essentially the same conditions. Alternatively, to construct an unbiased, multi-shift estimate of dust concentration over a longer term, it would be necessary to collect samples from randomly selected shifts over a period great enough to reflect the full range of changing conditions. Neither requirement is met by multi-shift MSHA inspections because (1) the mine environment is dynamic and no two shifts are alike and (2) MSHA inspectors are not there long enough to observe every condition in their inspection.

Based on the analysis presented by Kogut [1] and also on public comments received in response to the February 18 and June 6, 1994, notices, the Secretary has concluded that it should not be assumed that multiple shifts sampled during a single MSHA inspection are equally representative of atmospheric conditions to which a miner is typically exposed. This conclusion undercuts the rationale for multi-shift averaging within a single MSHA inspection, regardless of whether the objective is to estimate dust concentration for the individual shifts sampled as it is for MSHA inspector sampling or for typical shifts over a longer term as implied by some commenters. Measurements collected by MSHA on consecutive days or shifts of the same inspection do not comprise a random or otherwise representative sample from any larger population of shifts that would properly represent a long-term exposure or a particular phase of the mining cycle. Therefore, there is no basis for assuming that multi-shift averaging improves accuracy or reduces the risk of an erroneous enforcement determination.

*Appendix B—Citation Threshold Values (CTV)*

I. Interpretation of the CTV Table

Each CTV was calculated to ensure that, if the CTV is met or exceeded, noncompliance with the applicable standard can be inferred with at least 95-percent confidence. It is assumed that whatever dust standard happens to be in effect at the sampling location is binding, and that a citation is warranted whenever there is sufficient evidence that an established standard has been exceeded. The CTV table does not depend on how the applicable standard was established, or on any measurement uncertainties in the process of setting the applicable standard.

Some commenters argued that in order to construct a valid table of CTVs, MSHA would have to take into account the statistical distribution of dust concentrations over many shifts and locations. One commenter suggested that stochastic properties of the dust concentrations, which describe variability over time in probabilistic terms, should also be taken into account. MSHA, however, intends to use single, full-shift measurements only in determining noncompliance with the applicable standard on a particular shift and at the sampling location consistent with the measurement objective described in the MSHA and NIOSH joint finding published elsewhere in today's **Federal Register**. This is analogous to using a single measurement to identify individual suitcases that are unacceptable because they weigh more than five pounds. The efficacy of using a single measurement to identify unacceptable suitcases depends on the accuracy of the scale and the skill of the weigher. It does not depend on the statistical distribution of weights among suitcases or on any stochastic properties of the suitcase production process. These considerations would be relevant to estimating average weight for all suitcases produced, but they have nothing whatsoever to do with determining the weight of an individual suitcase using a sufficiently accurate scale. Averaging the weights of several suitcases would be entirely inappropriate and extremely misleading, since the object is to identify individual suitcases weighing more than five pounds. Although the measured weight of an individual suitcase is liable to contain some error (so the decision might be uncertain for a suitcase weighing five pounds and one ounce), a suitcase weighing seven or eight pounds could be rejected with high confidence on the first weighing. Additional weighings (of the same suitcase) would be required only for those suitcases whose initial measurement was very close to five pounds.

The CTV table provides criteria for testing a tentative, or presumptive,

hypothesis that the true full-shift average dust concentration did not exceed the applicable standard (S) at each of the individual locations sampled during a particular shift. For purposes of this test, the mine atmosphere at each such location is presumed to be in compliance unless the corresponding full-shift measurement provides sufficient evidence to the contrary. The ''true full-shift average'' does *not* refer, in this context, to an average across different occupations, locations, or shifts. Instead, it refers entirely to the dust concentration at the specific location of the sampler unit, averaged over the course of the particular shift during which the measurement was obtained. The CTV table is *not* designed to estimate or test the average dust concentration across occupational locations, or within any zone or mine area, or in the air actually inhaled by any particular miner.

Some commenters questioned why more than one sample might be required, if the first sample collected does not exceed the CTV. One of these commenters argued that in such case, ''compliance has already been established at a 95% confidence level based on the first single shift sample.'' This line of argument confuses confidence in issuing a citation with confidence of compliance. It also shows a basic misunderstanding of how the citation criteria relate to the requirement of continuous compliance under section 202(b) of the Mine Act.

The CTV table ensures that noncompliance is cited only when there is a 95-percent level of confidence that the applicable standard has actually been exceeded. If a single measurement does not meet the criterion for citation, this does not necessarily imply probable compliance with the dust standard—let alone compliance at a 95-percent confidence level. For example, a single, full-shift measurement of 2.14 mg/m$^3$ would not, according to the CTV table, indicate noncompliance with sufficient confidence to warrant a citation if S = 2.0 mg/m$^3$. This does not imply that the mine atmosphere was in compliance on the shift and at the location sampled. On the contrary, unless contradictory evidence were available, this measurement would indicate that the MMU was probably *out* of compliance. However, because there is a small chance that the measurement exceeded the standard only because of measurement error, a citation would not be issued. Additional measurements would be necessary to verify the apparent lack of adequate control measures. Similarly, a single, full-shift measurement of 1.92 mg/m$^3$ would not warrant citation; but, because of possible measurement error, neither would it warrant concluding that the mine atmosphere sampled was in compliance. To confirm that control measures are adequate, it would be necessary to obtain additional measurements.

Furthermore, even if a single, full-shift measurement were to demonstrate, at a high confidence level, that the mine atmosphere was in compliance at the sampling location on a given shift, additional measurements would be required to demonstrate compliance on each shift. For example, if S = 2.0 mg/m$^3$, then a valid measurement of 1.65 mg/m$^3$ would demonstrate compliance on the particular shift and at the particular location sampled. It would not, however, demonstrate compliance on other shifts or at other locations.

II. Derivation of the CTV Table

Some commenters requested an explanation of the statistical theory underlying the CTV table. To understand how the CTVs are derived and justified, it is first necessary to distinguish between variability due to measurement error and variability due to actual differences in dust concentration. The variability observed among individual measurements obtained at different locations (or at different times) combines both: dust concentration measurements vary partly because of measurement error and partly because of genuine differences in the dust concentration being measured. This distinction, between measurement error and variation in the true dust concentration, can more easily be explained by first carefully defining some notational abbreviations.

One or more dust samples are collected in the same MMU or other mine area on a particular shift. Since it is necessary to distinguish between different samples in the same MMU, let $X_i$ represent the MRE-equivalent dust concentration measurement obtained from the $i^{th}$ sample. The quantity being measured is the true, full-shift average dust concentration at the $i^{th}$ sampling location and is denoted by $\mu_i$. Because of potential measurement errors, $\mu_i$ can never be known with complete certainty. A ''sample,'' ''measurement,'' or ''observation'' always refers to an instance of $X_i$ rather than $\mu_i$.

The overall measurement error associated with an individual measurement is nothing more than the difference between the measurement ($X_i$) and the quantity being measured ($\mu_i$). Therefore, this error can be represented as

$$\varepsilon_i = X_i - \mu_i.$$

Equivalently, any measurement can be regarded as the true concentration in the atmosphere sampled, with a measurement error added on:

$$X_i = \mu_i + \varepsilon_i.$$

For two different measurements ($X_1$ and $X_2$), it follows that $X_1$ may differ from $X_2$ not only because of the combined effects of $\varepsilon_1$ and $\varepsilon_2$, but also because $\mu_1$ differs from $\mu_2$.

The probability distribution of $X_i$ around $\mu_i$ depends only on the probability distribution of $\varepsilon_i$ and should not be confused with the statistical distribution of $\mu_i$ itself, which arises from spatial and/or temporal variability in dust concentration. This variability [i.e., among $\mu_i$ for different values of I] is not associated with inadequacies of the measurement system, but real variation in exposures due to the fact that contaminant generation rates vary greatly in time and contaminants are heterogeneously distributed in workplace air.

Since noncompliance determinations are made relative to individual sampling locations on individual shifts, derivation of the CTV table requires no assumptions or inferences about the spatial or temporal pattern of atmospheric dust concentrations—i.e., the statistical distribution of $\mu_i$. MSHA is not evaluating dust concentrations averaged across the various sampler locations. Therefore, the degree and pattern of variability observed among different measurements obtained during an MSHA inspection are not used in establishing any CTV. Instead, the CTV for each applicable standard (S) is based entirely on the distribution of measurement errors ($\varepsilon_i$) expected for the maximum dust concentration in compliance with that standard—i.e., a concentration equal to S itself.

If control filters are used to eliminate potential biases, then each $\varepsilon_i$ arises from a combination of four weighing errors (pre-and post-exposure for both the control and exposed filter capsule) and a continuous summation of instantaneous measurement errors accumulated over the course of an eight-hour sample. Since the eight-hour period can be subdivided into an arbitrarily large number of sub-intervals, and some fraction of $\varepsilon_i$ is associated with each sub-interval, $\varepsilon_i$ can be represented as comprising the sum of an arbitrarily large number of sub-interval errors. By the Central Limit Theorem, such a summation tends to be normally distributed, regardless of the distribution of subinterval errors. This does not depend on the distribution of

$\mu_i$, which is generally represented as being lognormal.

Furthermore, each measurement made by an MSHA inspector is based on the difference between pre- and post-exposure weights of a dust sample, as determined in the same laboratory, and adjusted by the weight gain or loss of the control filter capsule. Any systematic error or bias in the weighing process attributable to the laboratory is mathematically canceled out by subtraction. Furthermore, any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules is also mathematically canceled out. Elimination of the sources of systematic errors identified above, together with the fact that the concentration of respirable dust is defined by section 202(e) of the Mine Act to mean the average concentration of respirable dust measured by an approved sampler unit, implies that the measurements are unbiased. This means that $\varepsilon_i$ is equally likely to be positive or negative and, on average, equal to zero.

Therefore, each $\varepsilon_i$ is assumed to be normally distributed, with a mean value of zero and a degree of variability represented by its standard deviation

$$\sigma_i = \mu_i \cdot CV_{total} .$$

Since $X_i = \mu_i + \varepsilon_i$, it follows that for a given value of $\mu_i$, $X_i$ is normally distributed with expected value equal to $\mu_i$ and standard deviation equal to $\sigma_i$. $CV_{total}$, described in the MSHA and NIOSH joint finding published elsewhere in today's **Federal Register**, is the *coefficient of variation* in measurements corresponding to a given value of $\mu_i$. $CV_{total}$ relates entirely to variability due to measurement errors and not at all to variability in actual dust concentrations.

MSHA's procedure for citing noncompliance based on the CTV table consists of formally testing a presumption of compliance at every location sampled. Compliance with the applicable standard at the $i^{th}$ sampling location is expressed by the relation $\mu_i \leq S$. Max$\{\mu_i\}$ denotes the maximum dust concentration, among all of the sampling locations within an MMU. Therefore, if Max$\{\mu_i\} \leq S$, none of the sampler units in the MMU were exposed to excessive dust concentration. Since the burden of proof is on MSHA to demonstrate noncompliance, the hypothesis being tested (called the *null hypothesis, or* $H_0$,) is that the concentration at every location sampled is *in* compliance with the applicable standard. Equivalently, for an MMU the null hypothesis ($H_0$) is that max$\{\mu_i\} \leq S$. In other areas, where only one, full-shift measurement is made, the null hypothesis is simply that $\mu_i \leq S$.

The test consists of evaluating the likelihood of measurements obtained during an MSHA inspection, under the assumption that $H_0$ is true. Since $X_i = \mu_i + \varepsilon_i$, $X_i$ (or max$\{X_i\}$ in the case of an MMU) can exceed S even under that assumption. However, based on the normal distribution of measurement errors, it is possible to calculate the probability that a measurement error would be large enough to fully account for the measurement's exceeding the standard. The greater the amount by which $X_i$ exceeds S, the less likely it is that this would be due to measurement error alone. If, under $H_0$, this probability is less than five percent, then $H_0$ can be rejected at a 95-percent confidence level and a citation is warranted. For an MMU, rejecting $H_0$ (and therefore issuing a citation) is equivalent to determining that $\mu_i > S$ for at least one value of *I.*

Each CTV listed was calculated to ensure that citations will be issued at a confidence level of at least 95 percent. As described in MSHA's February 1994 notice and explained further by Kogut [2], the tabled CTV corresponding to each S was calculated on the assumption that, at each sampling location:

$$CV_{total} \leq CV_{CTV} = \sqrt{\left(\frac{0.14\,mg/m^3}{\mu_i\,mg/m^3}\cdot 100\%\right)^2 + (5\%)^2 + (5\%)^2}$$

The MSHA and NIOSH joint finding establishes that for valid measurements made with an approved sampler unit, $CV_{total}$ is in fact less than $CV_{CTV}$ at all dust concentrations ($\mu^i$).

The situation in which measurement error is most likely to cause an erroneous noncompliance determination is the hypothetical case of $\mu_i = S$ for either a single, full-shift measurement or for all of the measurements made in the same MMU. In that borderline situation—i.e., the worst case consistent with $H_o$—the standard deviation is identical for all measurement errors. Therefore, the value of s used in constructing the CTV table is the product of S and $CV_{CTV}$ evaluated for a dust concentration equal to S:

$$\sigma = S\cdot\sqrt{\left(\frac{0.14}{S}\right)^2 + (.05)^2 + (.05)^2}$$

Assuming a normal distribution of measurement errors as explained above, it follows that the probability a single measurement would equal or exceed the critical value

$$c = S + 1.64\cdot\sigma$$

is five percent under $H_o$ when $CV_{total} = CV_{CTV}$. The tabled CTV corresponding to S is derived by simply raising the critical value *c* up to the next exact multiple of 0.01 mg/m$^3$.

For example, at a dust concentration ($\mu_i$) just meeting the applicable standard of S = 2 mg/m$^3$, $CV_{CTV}$ is 9.95 percent. Therefore, the calculated value of *c* is 2.326 and the CTV is 2.33 mg/m$^3$. Any valid single, full-shift measurement at or above this CTV is unlikely to be this large simply because of measurement error. Therefore, any such measurement warrants a noncompliance citation.

The probability that a measurement exceeds the CTV is even smaller if $\mu_i > S$ for any I. Furthermore, to the extent that $CV_{total}$ is actually less than $CV_{CTV}$, $\sigma$ is actually less than $S\bullet CV_{CTV}$. This results in an even lower probability that the critical value would be exceeded under the null hypothesis. Consequently, if any single, full-shift measurement equals or exceeds *c*, then $H_o$ can be rejected at confidence level of at least 95-percent. Since rejection of $H_o$ implies that $\mu_i \leq S$ for at least one value of I, this warrants a noncompliance citation.

It should be noted that when each of several measurements is separately compared to the CTV table, the probability that at least one $\varepsilon_i$ will be large enough to force $X_i \geq$ CTV when $\mu_i \leq S$ is greater than the probability when only a single comparison is made. For example (still assuming S = 2 mg/m$^3$), if $CV_{total}$ is actually 6.6%, then the standard deviation of $\varepsilon_i$ is 6.6% of 2.0 mg/m$^3$, or 0.132 mg/m$^3$, when $\mu_i = S$. Using properties of the normal distribution, the probability that any single measurement would exceed the CTV in this borderline situation is calculated to be 0.0062. However, the

probability that at least one of five such measurements results in a citation is 1—$(0.9938)^5$ = 3.1 percent. Therefore, the confidence level at which a citation can be issued, based on the maximum of five measurements made in the same MMU on a given shift, is 97%.

The constant 1.64 used in calculating the CTV is a *1-tailed 95-percent confidence coefficient* and is derived from the standard normal probability distribution. At least one commenter expressed confusion about whether the CTV table is based on a 1-tailed or a 2-tailed confidence coefficient. This commenter claimed that MSHA's use of a confidence coefficient equal to 1.64 ''clearly establishes a 90% confidence level'' rather than 95%. The commenter apparently confused the CTV for rejecting a 1-tailed hypothesis ($\mu_i \leq S$) with the pair of critical values for rejecting a 2-tailed hypothesis ($\mu_i = S$) and inferring that $\mu_i$ simply differs from S in either direction. The criterion for rejecting the latter hypothesis would be a measurement either sufficiently above the applicable standard or sufficiently below it. In testing for a difference of arbitrary direction, 1.64 would indeed yield a pair of 90-percent confidence limits, with a 5-percent chance of erring on either side. The purpose of the CTV table, however, is to provide criteria for determining that the true dust concentration strictly exceeds the applicable standard. Since such a determination can occur only when a single, full-shift measurement is sufficiently high, there is exactly zero probability of erroneously citing noncompliance when a measurement falls below the lower confidence limit. Consequently, the total probability of erroneously citing noncompliance equals the probability that a standard normal random variable exceeds 1.64, which is 5 percent.

One commenter alluded to testimony in the *Keystone* case (*Keystone* v. *Secretary of Labor,* 16 FMSHRC 6 (Jan. 4, 1994)), suggesting that application of the CTV to a single measurement involves an invalid comparison of two distributions or comparison of two means. Contrary to much of the testimony presented in that case, a determination of noncompliance using the CTV table is based on the decision procedure described above. It does not involve any comparison of probability distributions or means. Nor does it involve any statistical distribution of dust concentrations. It involves only the comparison of an individual full-shift measurement to the applicable standard. There is only one probability distribution involved in this comparison: namely, the distribution of random measurement errors by which each full-shift measurement deviates from the true dust concentration to which the sampler unit is exposed.

Some commenters apparently misunderstood the effect of potential weighing errors on the formula for calculating the CTV corresponding to different applicable standards. Weight gain is estimated from the difference between two weighings of an exposed filter capsule, adjusted by subtracting the difference between two weighings of a control filter capsule. Since weight gains are small compared to the total weight of capsules being weighed, any dependence of weighing error on the magnitude of the mass being weighed is canceled in the process of calculating the difference. Since the standard deviation of the error in weight gain is, therefore, essentially constant, the ratio of that standard deviation to the dust concentration being measured decreases with increasing dust concentration. This causes $CV_{CTV}$ to decrease as the dust concentration increases. As explained above, the CTV corresponding to S is calculated using the value of $CV_{CTV}$ for dust concentrations exactly equal to S. Consequently, the CTV corresponding to a standard of 2.0 mg/$m^3$ is based on a smaller value of $CV_{CTV}$ than the CTV corresponding to a standard of 0.2 mg/$m^3$.

One commenter implied that use of the CTV table relies on an assumption that $CV_{total}$ declines at concentrations greater than 2.0 mg/$m^3$ (or S in general). As explained previously, the CTV corresponding to different applicable standards is designed to test the null hypothesis that S is not exceeded. For each applicable standard, entries are based on the probability distribution of observations expected under that presumption. Consequently, the magnitude of $CV_{total}$ assumed in establishing or applying any CTV does not decrease below the value of $CV_{total}$ calculated for a concentration of 2.0 mg/$m^3$, since that is the maximum applicable standard being tested. Because the probability of wrongly citing noncompliance is zero when S is exceeded, measurement uncertainty at concentrations greater than S is not relevant to noncompliance determinations. (It would, however, be relevant to inferring compliance at a specified confidence level—i.e., to a test of the alternative hypothesis that S is not exceeded.)

III. Validity of the CTV table

Some commenters questioned the validity of the CTV table and challenged the formula used to calculate each CTV listed. Some objected to the use of a normal distribution and claimed that a lognormal distribution or nonparametric assumptions would be more appropriate. Other commenters objected specifically to the use of a confidence coefficient based on a standard normal probability distribution, rather than a t-distribution. The validity of using $\sqrt{n}$, rather than $\sqrt{(n-1)}$, in the formula used to calculate citation threshold values in MSHA's February 1994 notice, was also questioned. At least one commenter contended that the formula used to generate the CTV table is not valid for use with only one measurement.

Such comments would have some validity if the CTV table were intended to test or estimate average concentration over some spatially distributed region of a mine or some period greater than the single shift during which each measurement is taken. In either case, it might be necessary and appropriate to estimate variation in concentration directly from the measurement samples obtained. Such an estimate could conceivably be used in establishing a site-specific threshold value for citation. This would, indeed, require a theoretical minimum of two samples, or far more for valid practical applications. Estimating variability from the samples collected would also require additional assumptions or nonparametric methods to reflect the pattern of variation in dust concentration between locations or shifts.

The objections raised, however, apply to a very different task from the one for which the CTV table is designed. As explained previously, the CTV table is not meant to test dust concentration averaged over any period greater than the shift during which measurements were taken. Nor is it meant to test dust concentration averaged across different occupational locations or throughout any spatially distributed region of the mine. Instead, the CTV table provides criteria for determining noncompliance at individual sampling locations on individual shifts. Neither the spatial nor temporal distribution of the dust concentrations is germane to the intended citation criteria. Although several measurements may be taken during a single inspection, MSHA regards each of these measurements as relating to the dust concentration uniquely associated on a given shift with a separate sampling location. Each such dust concentration ($\mu_i$) is the average for the atmosphere at the sampling location, accumulated over the course of the single, full shift sampled. Since the enforcement objective is to determine whether $\mu_i > S$ for any individual I, it is not necessary to estimate or assume anything about the

degree to which $\mu_i$ varies from location to location or from shift to shift. Nor is it necessary to assume anything about the spatial or temporal statistical distribution of $\mu_i$. No such assumptions are built into the CTV table. A normal distribution is imputed only to $\varepsilon_i$, the difference between $X_i$ and $\mu_i$. Since the mean across various $\mu_i$ is not being estimated or tested, it is not necessary to estimate variability among the $\mu_i$ from measurements taken during the inspection. MSHA emphatically agrees with those commenters who stressed the impossibility of doing so with a single measurement.

Those commenters who objected to MSHA's use of a normal distribution, claiming that a lognormal distribution or nonparametric assumptions would be more appropriate, apparently confused the distribution of dust concentrations over time and between locations with the distribution of errors that arise when measuring dust concentration at a specific time and location. In other words, they confused the distribution of $\mu_i$ with the distribution of $\varepsilon_i$. The concerns about non-normality stem from confusion about what quantity is being estimated.

MSHA does not dispute the fact that lognormal or nonparametric methods are often appropriate for modeling variability in occupational dust concentrations. MSHA, however, is explicitly not claiming to estimate any quantity beyond the average dust concentration at a particular sampling location on a single shift. MSHA does not claim that dust concentrations are normally distributed from shift to shift, from occupation to occupation, or from location to location; nor is any such assumption built into the CTV table. Since the object is not to estimate average concentration over a range of different locations or shifts, the statistical distribution of $\mu_i$ is irrelevant, and application of lognormal or nonparametric techniques in constructing citation criteria is both unnecessary and inappropriate.

In constructing the CTV table, MSHA used a normal probability distribution solely to represent a potential measurement error, $\varepsilon_i$. This measurement error causes a measurement $X_i$ to deviate from $\mu_i$, the actual dust concentration at a specific time and place. As distinguished from the statistical distribution of dust concentrations, it is generally accepted that the distribution of measurement errors around a given concentration is *normal* [3]. This was explicitly acknowledged by members of the industry panel in their Morgantown testimony.

Similarly, criticism directed against MSHA's use of a confidence coefficient derived from the standard normal distribution instead of the t-distribution arises from a basic misunder standing of what is or is not being estimated in the decision procedure. Contrary to the remark of one commenter, use of the t-distribution is not justified as a ''compromise'' between normal-theoretic and nonparametric assumptions. The t-distribution arises in statistical theory when a normally distributed random variable is divided by an estimate of its standard deviation. Typically it is applied to situations in which the mean and standard deviation are estimated from the same normally distributed data, consisting of fewer than about thirty or forty random data points. If the estimate of standard deviation is based on more data, then the confidence coefficient derived from the t-distribution is approximately equal to the corresponding value derived from the standard normal distribution. Use of the t-distribution is appropriate, for example, when a group of normally distributed observations is ''standardized'' by subtracting the group mean from each observation and dividing the result by the group standard deviation.

Those commenters advocating a confidence coefficient based on the t-distribution failed to recognize that $CV_{CTV}$ was not derived from the measurements that MSHA inspectors will use to test for compliance with S. Use of the t-distribution is *not* appropriate when an independently known or stipulated standard deviation is used in comparing observations to a standard [3]. The standard deviation of measurement errors used in constructing the CTV table is derived from prior knowledge, rather than estimated from a few measurements taken during an inspection. Experimental analysis has shown that $CV_{total}$ is less than $CV_{CTV}$. So long as this is true, use of a confidence coefficient derived from the standard normal distribution is entirely appropriate.

Contrary to the claims of some commenters, there is no valid basis for including a so-called $[n/(n-1)]^{1/2}$ ''correction factor'' in the formula for establishing a CTV. (The ''n'' in this expression would refer to the number of measurements, if a noncompliance determination were based on the average of several measurements.) The theory behind such a factor does not apply when, as in the case of the CTV table, a predetermined or maximum tolerated variability in measurement error is used in comparing observations to a standard [3]. It would apply only if variability in measurements observed during each inspection were somehow used to construct a CTV specific to that inspection. The variability observed among multiple samples collected during an MSHA inspection has little to do with the accuracy of an individual measurement and is not used at all in constructing the CTV table.

Although no explicit reason was given for the claim by some commenters that the formula used to generate the CTV table is not valid for use with a single measurement, this would follow if either: (1) the appropriate basis for the confidence coefficient were a t-distribution rather than a standard normal distribution; or (2) it were necessary to multiply the CTV by $[n/(n-1)]^{1/2}$, where n is the number of measurements on which a noncompliance determination is based. In the former case, the standard normal distribution would not adequately approximate the t-distribution; and in the latter case, $n = 1$ would cause the so-called correction factor, and hence the CTV, to be mathematically indeterminate for determinations based on a single sample. It has already been explained, however, that neither of these considerations are applicable to the CTV table.

Some commenters stated that a single measurement cannot accurately be used to detect excessive dust concentrations, even if the noncompliance determination applies only to a specific shift and location. These commenters implied that due to random, temporary fluctuations in dust concentration, a single measurement is inherently unstable and misleading. Such arguments fail to differentiate a full-shift sample from a ''grab sample,'' which is typically a sample collected over only a few minutes or seconds and used to estimate average conditions over an entire shift. In contrast to a grab sample, each full-shift dust sample is collected continuously over the full period to which the measurement applies. An 8-hour dust sample consists of 480 1-minute grab samples, or an arbitrarily large number of even shorter grab samples. A full-shift dust sample can be viewed as measuring average concentration over the entire shift by averaging together all of these shorter subsamples. Although short-term fluctuations in dust concentration, as well as random changes in flow rate and collection efficiency, may cause many of the subsamples to poorly represent average concentration over the entire shift, random short-term aberrations tend to cancel one another when the subsamples are combined. Therefore, a

full-shift dust sample does not suffer from lack of sample size.

*Appendix C—Risk of Erroneous Enforcement Determinations*

I. What Constitutes Compliance or Noncompliance?

To simplify the following discussion, let μ denote the average dust concentration to which a sampler unit is exposed on a given shift, let S denote the applicable standard, and let X denote a valid, full-shift measurement of μ. Also, let c be the CTV in the table corresponding to S so that a citation is issued when $X \geq c$. Section 202(b)(2) of the Mine Act requires that the average dust concentration during each shift be maintained at or below the applicable standard wherever miners normally work or travel. This means that, on any given shift, the average dust concentration (μ) at any valid sampling location must not exceed the applicable standard (S).

Since the CTVs listed always exceed S it can happen that a full-shift measurement (X) falls between S and c. In such instances, MSHA will not issue a citation. This does not, however, imply that MSHA considers the mine atmosphere sampled to have been in compliance with the Mine Act or that cases of marginal noncompliance are tolerable. MSHA's use of the CTVs is not motivated by any tacit acceptance of marginal noncompliance. Rather, it is motivated by the necessity to avoid unsustainable violations. When X falls between S and c, this provides some evidence that $\mu > S$; but the evidence is insufficient to warrant a citation.

Although $\mu > S$ constitutes a violation, X greater than S but less than the CTV does not provide compelling evidence that $\mu > S$. This is because, in a sufficiently well-controlled mining environment, X is more likely to slightly exceed S due to measurement error than due to $\mu > S$. In fact, as demonstrated in Appendix D, citing when $X > S$ but $X < c$ could result in citations when the probability of compliance ($\mu \leq S$) on the shift and location sampled is greater than 50 percent. Use of the CTV table is necessary in order to avoid citing in such cases.

There are two sorts of conclusions that might be drawn from the results of a single MSHA inspection: those relating to the individual shift sampled and those relating to some longer time period, such as the full interval between MSHA inspections. Therefore, in evaluating the probability of erroneous enforcement determinations, it is essential to distinguish between (1) compliance or noncompliance with the applicable standard on the shift sampled and (2) compliance or noncompliance with the full requirement of the Mine Act as it applies to every shift over a longer term, such as the period between MSHA inspections.

If $\mu > S$ on some proportion of shifts, say $P < 1$, then the mine does not comply with the applicable standard on some individual shifts and, therefore, does not comply with the Mine Act over the longer term. At the same time, the mine is in compliance with the applicable standard (at the location sampled) on a complementary proportion, equal to 1—P, of individual shifts. If an MSHA inspection happens to fall on one of those shifts that is out of compliance, then a correct determination with respect to the individual shift would also be correct with respect to the longer term. If, on the other hand, the MSHA inspection happens to fall on a shift that is in compliance, then it would be a mistake to assume compliance on subsequent shifts and vice versa. Although MSHA interprets the Mine Act as requiring $\mu \leq S$ on each shift and at each sampling location to which miners in the active workings are exposed, the immediate objective of an MSHA dust inspection can only be to determine compliance or noncompliance for the shift and location sampled. Therefore, MSHA does not consider a compliance or noncompliance determination to be erroneous if it is correct with respect to the individual shift and location but incorrect with respect to other shifts or locations.

II. Uncertainty in the Standard-Setting Process

In response to the March, 12, 1996 MSHA/NIOSH **Federal Register** notice, a commenter claimed that a noncompliance determination based on a single, full-shift measurement could be erroneous if the applicable standard was improperly established due to measurement errors associated with silica analysis. It was, therefore, suggested that uncertainty in the standard-setting process should be factored into the risk of erroneous enforcement decisions. MSHA agrees that, like any measurement process, the sampling and analytical method used to quantify the silica content of a respirable dust sample in order to set the applicable standard is subject to potential measurement errors. Therefore, MSHA uses an analytical procedure that meets the requirement of a NIOSH Class B analytical method. Applicable standards are set based on results of silica analysis using the most up-to-date laboratory equipment.

The Secretary, however, considers the accuracy of the standard-setting process to be a separate issue from the accuracy of noncompliance determinations based on a single-full-shift measurement, once the applicable standard has been set. The present notice relates only to the enforcement of the applicable standard in effect at time of the sampling inspection. Therefore, the following discussion treats any applicable standard in effect at the time of sampling as binding and evaluates the risk of erroneous determinations relative to that standard.

III. Measurement Uncertainty and Dust Concentration Variability

Variability in dust concentration refers to the differing values of μ on different shifts or at different locations. For a given value of μ, measurement uncertainty refers to the differing measurement results that could arise because of different potential measurement errors. If $\mu \leq S$, measurement error can cause an erroneous citation. Similarly, if $\mu > S$, then measurement error can cause an erroneous failure to cite.

The ''margin of error'' separating each CTV from the corresponding applicable standard does not eliminate the possibility of erroneous enforcement determinations due to uncertainty in the measurement process. A determination based on comparing X to the CTV could be erroneous in either of two ways with respect to the individual shift sampled: (1) the comparison could erroneously indicate noncompliance on the shift (i.e, $X \geq c$ but $\mu \leq S$) or (2) the comparison could erroneously fail to indicate noncompliance on the shift (i.e, $X < c$ but $\mu > S$). The margin of error built into the CTV table reduces the probability of erroneous citations but increases the probability of erroneous failures to cite.

MSHA recognizes that in determining how large the margin of error should be, there is a tradeoff between the probabilities of these two mistakes—i.e., if the chance of erroneously failing to cite is reduced, then the chance of erroneously citing is increased, and vice versa. MSHA has constructed the CTV. table so as to ensure that citations will be issued only when they can be issued at a high level of confidence. As will be shown below, doing this provides assurance that for any given citation, μ is more likely than not to actually exceed S. In contrast, if there were no margin of error, citations more likely than not to be erroneous could occasionally be issued. Examples of this are given in Appendix D.

In the discussion below, the risk of erroneous citations and erroneous failures to cite is quantified for noncompliance determinations based on the CTV table. To illustrate points in the theoretical discussion, three different mining environments will be used as examples. These environments exemplify different degrees of dust concentration variability and dust control effectiveness. The first example (Case 1) is based on historical mine data provided by commenters in connection with these proceedings. The second and third examples (Case 2 and Case 3) are hypothetical and are designed to reflect extremely well-controlled and poorly controlled mining environments, respectively. In these three examples, it will be assumed that $\mu$ is lognormally distributed from shift to shift. This is a standard assumption for airborne contaminants in an occupational setting [3]. The three cases considered are characterized as follows:

| Case | Dust concentration ($mg/m^3$) | | | | |
|---|---|---|---|---|---|
| | Arithmetic mean, $E\{\mu\}$ | Arithmetic Std. Dev., $SD\{\mu\}$ | Geometric mean | Geometric Std. Dev. | Prb $\{\mu>S\}$ (percent) |
| 1 | 1.66 | 0.70 | 1.53 | 1.50 | 25.4 |
| 2 | 1.20 | 0.24 | 1.18 | 1.22 | 0.4 |
| 3 | 2.20 | 1.32 | 1.89 | 1.74 | 45.8 |

In addition to the variability in dust concentrations described by the arithmetic and geometric standard deviations of $\mu$, full-shift measurements contain a degree of uncertainty described by $CV_{total}$, the coefficient of variation for measurements of the same dust concentration. In calculating the probability of erroneous determinations for the three example cases, it will also be assumed that the applicable standard is $S = 2.0\ mg/m^3$ and that the coefficient of variation in full-shift measurements taken at a given value of $\mu$ is:

$$CV_{total} = \sqrt{\left(\frac{1.38 \cdot \frac{1000\ \text{Liters}/\text{m}^3 \cdot \sigma_e \sqrt{2}}{2\ \text{Liters}/\text{min} \cdot 480\ \text{min}}}{\mu}\right)^2 + \left(CV_{pump}\right)^2 + \left(CV_{sampler}\right)^2}$$

Where $\sigma_e = 9.12\ \mu g$ is the standard deviation of error in weight gain, as determined from MSHA's 1995 field investigation of measurement precision [4]; 1.38 is the MRE-equivalent conversion factor for measurements made with an approved sampler unit; the first quantity being squared is $CV_{weight}$; $CV_{pump} = 4.2\%$ and $CV_{sampler} = 5\%$, as explained in Appendix B.II of the joint MSHA and NIOSH notice of finding published elsewhere in today's **Federal Register**.

It should be noted that the ''total'' in $CV_{total}$ refers to total measurement uncertainty and is not meant to include the effects of variability in dust concentration.

Because it employs a higher value for $CV_{sampler}$ (reflecting variability amongst used rather than new 10-mm nylon cyclones), this composite estimate of $CV_{total}$ is slightly greater and perhaps slightly more realistic than that obtained directly from MSHA's 1995 field investigation. It declines from 11.3% at dust concentrations of $0.2\ mg/m^3$ to no more than 6.6% at concentrations of $2.0\ mg/m^3$ or greater. At all dust concentrations within this range, it falls well below the 12.8% maximum value permitted for a method meeting the NIOSH Accuracy Criterion [5]. It is also smaller than the value, $CV_{CTV}$, used to construct the CTV table. As explained in Appendix B, this ensures that any citation issued will be warranted at a confidence level of at least 95 percent.

To simplify the discussion below on risk of erroneous citations and erroneous failures to cite, it is necessary to introduce some additional notation and to focus on just one measurement collected during each inspection.[2] This could be the ''D.O.'' sample in a MMU, or the measurement collected for a designated area. Let $\varepsilon = X - \mu$ represent the measurement error in a valid measurement. For reasons explained in Appendix B, $\varepsilon$ is assumed to be normally distributed with zero mean and standard deviation equal to $\sigma = \mu \bullet CV_{total}$. Consequently, X is normally distributed with mean equal to $\mu$ and standard deviation equal to $\sigma$. This normal distribution of X around $\mu$ reflects uncertainty in the measurement of a given dust concentration. On any given shift, the probability distribution of X is determined by the value of $\mu$ for that shift and sampling location. Therefore, the probability of citation on a given shift is conditional on $\mu$ and is denoted by $Prb\{X \geq c \mid \mu.\}$[3]

Since $\mu$ varies from shift to shift, variability in dust concentration is represented by the probability distribution of $\mu$. Let $E\{\mu\}$ denote the expected (i.e., arithmetic mean) dust concentration over some longer term of interest, such as the interval between MSHA inspections; and let $SD\{\mu\}$ denote the standard deviation of $\mu$ over the same period. Although the value of $\mu$ on any individual shift is unknown, $Prb\{X \geq c\}$ can be calculated using the probability distribution of $\mu$. In particular, if the probability is known that $\mu$ fulfills a specified condition, such as $\mu \leq S$ or $\mu > S$, then

$$Prb\{X \geq c\} = Prb\{X \geq c \mid \mu \leq S\} \bullet Prb\{\mu \leq S\} + Prb\{X \geq c \mid \mu > S\} \bullet Prb\{\mu > S\}.$$

Over a sufficiently long term, with respect to any particular sampling

[2] Appendix D addresses cases in which a noncompliance determination is based on the maximum of several measurements.

[3] A vertical bar is used to denote conditional probability. Prb {A | B} denotes the conditional probability of event A, given the occurrence of event B. For any events A and B,

Prb{A|B}=Prb{A and B}/Prb {B}=Prb{B|A}•Prb {A}/Prb{B}

location, Prb{μ>S} and Prb{μ≤S} can be identified, respectively, with the proportion of noncompliant shifts, P, and the proportion of compliant shifts, 1 − P. P is sometimes called the noncompliance fraction and more or less defines the likelihood that the applicable standard is or is not exceeded on the particular shift inspected.[4]

If the statistical distribution of μ can be adequately represented by a probability density function, denoted f(μ), then Prb{μ>S} and Prb{μ≤S} can also be calculated by integrating f(μ) over the desired range. The probability that μ falls in any interval, say between a and b, is given by:

$$\mathrm{Prb}\{a < \mu \le b\} = \int_a^b f(\mu)\,d\mu \quad .$$

It follows that:

$$\mathrm{Prb}\{X > c \mid a < \mu \le b\} = \frac{\int_a^b \mathrm{Prb}\{X > c \mid \mu\} \cdot f(\mu)\,d\mu}{\int_a^b f(\mu)\,d\mu}$$

IV. Risk of Erroneous Citation

Some commenters argued that a citation for noncompliance is warranted only if the average dust concentration to which a miner is exposed exceeds the applicable standard over a period of time greater than a single shift, such as a bimonthly sampling period, a year, or a miner's lifetime. Therefore, these commenters called it ''unfair'' to cite individual shifts on which the applicable standard is exceeded, so long as the average over this longer term meets the applicable standard. For example, based on the historical sampling data provided by a commenter and employed here as Case 1, one commenter concluded that ''* * * there is at least a 1 in 6 or 17% probability that any single sample can show potential overexposure [using the CTV table] when one does not exist.'' Further, these commenters maintained that basing citations on a single, full-shift measurement would substantially increase the frequency of unfair citations, compared to existing MSHA policy.

Using the notation introduced above, these commenters have confused μ with E(μ) and confounded the noncompliance fraction *P* with the probability of erroneous citation. For example, the 17-percent figure mentioned above includes all cases in which X ≥ c, regardless of whether μ > S on the shift sampled. In the discussion accompanying the data, commenters argue that since E(μ) is approximately 1.66 mg/m$^3$, or less than 1.85 mg/m$^3$ at a high confidence level, ''* * * [cases of X ≥ c] show potential overexposure when one does not exist.'' This statement depends on the unwarranted assumption that miners exposed to these conditions have been exposed to similarly distributed dust concentrations in the past and that they will be exposed to similarly distributed concentrations in the future. These commenters' own analysis indicates that the dust concentration has not been kept below the standard on each shift. Therefore, a citation is warranted under the Mine Act.

To more fully explore what is going on in Case 1, suppose, as these commenters suggest, that dust concentrations over the period observed are lognormally distributed from shift to shift, with E{μ} = 1.66 mg/m$^3$ and a geometric standard deviation of about 1.5 mg/m$^3$. Under this assumption, μ > 2.0 mg/m$^3$ on more than 25 percent of all shifts, and μ > 2.33 mg/m$^3$ on 15 percent. These percentages pertain to actual dust concentrations and have nothing to do with measurement error or accuracy of an individual measurement. Therefore, a 2.0 mg/m$^3$ dust standard would be violated on 25 percent of all production shifts. The applicable standard would be violated by an amount greater than 0.33 mg/m$^3$ on 15 percent. Since 2.33 is the CTV for a single measurement, this 15 percent actually represents shifts sufficiently far out of compliance that they would probably be cited if inspected. Nevertheless, the commenters' analysis includes such shifts in the 17 percent claimed as cases subject to erroneous or unfair citation.

The expected value of the noncompliance fraction (P) in Case 1 is 25 percent. Therefore, close to 25 percent of all single shift measurements made under the conditions of Case 1 would be expected to exceed the standard. Only 17 percent of the single full-shift measurements taken, however, exceeded the CTV and would have warranted citations. Using the estimate of $CV_{total}$ described above, 15 percent of all single shift measurements would be expected to do so. Therefore, contrary to the commenters' conclusion, Case 1 does not demonstrate a high probability of erroneously identifying overexposures. Instead, it illustrates an effect of the high confidence level required for citation: the margin of error built into the CTV reduces the probability of citing whatever shift happens to be selected for inspection from about 25 percent to 15 percent. Although the applicable standard is violated on 25 percent of the shifts, there is only a 15 percent chance that any particular measurement meets the citation criterion.

To correctly and unambiguously quantify the risk of ''unfair'' citations, it is necessary to identify three distinct ways of interpreting the risk of erroneous noncompliance determinations. This risk can be defined alternatively as:

(1) the probability of citing when the mine atmosphere sampled is actually in compliance, Prb{X≥c|μ≤S};

(2) the probability that the mine atmosphere on a shift randomly selected for inspection is in compliance but is nevertheless cited, Prb{μ≤S and X≥c}; or

(3) the probability that a given citation is erroneous,

Prb{μ≤S|X≥c}.

These three different probabilities apply to three different base populations. Although the different interpretations of risk give rise to quantitatively different probabilities, the expected total number of erroneous citations, denoted $N_\alpha$, remains constant if each probability is multiplied by the size of the population to which it applies. To obtain $N_\alpha$, the first probability must be multiplied by the number of valid measurements made when μ ≤ S, the second by the total number of valid measurements, and the third by the total number of citations issued—i.e., valid measurements for which X ≥ c.

The CTV table limits the probability of erroneously citing defined by the first two interpretations to a maximum of less than five percent. However, in a

[4] P defines this likelihood exactly only if shifts are randomly selected for MSHA inspection and there is no adjustment of conditions in response to the inspection.

well-controlled mining environment, where citations are rarely warranted, the third probability can be larger than the first two. Since the burden of proof rests with MSHA to demonstrate noncompliance, it is essential that $\alpha$° be kept well below 50 percent. As will be shown by example, the use of the CTV table accomplishes this goal.

Each of the three different probabilities related to erroneous noncompliance determinations will now be explained in detail. Calculations for all examples are performed under the assumptions (1) that $\mu$ is lognormally distributed and (2) that $\varepsilon$ is normally distributed with mean equal to zero and standard deviation equal to $\mu \bullet CV_{total}$.

1. $\alpha = Prb\{X \geq c | \mu \leq S\}$

The first risk to be considered is the probability of citing noncompliance when the mine atmosphere sampled is actually in compliance. This probability represents the proportion of those measurements made when $\mu \leq S$ that result in $X \geq c$. In other words, $\alpha = Prb\{X \geq c | \mu \leq S\}$ is the probability that, due to measurement error, a citation is issued under the condition that $\mu \leq S$. This is the probability associated with what is commonly designated Type I error for testing the null hypothesis: $\mu \leq S$ on the shift sampled.

Essentially, $\alpha$ is the expected (i.e., mean) probability of citation over all those shifts sampled that are at or below the applicable standard. The relative frequency distribution of $\mu$ over those shifts is described by its probability density function, $f(\mu)$. Therefore, $\alpha$ can be calculated as follows:

$$\alpha = \int_0^S \frac{Prb\{X \geq c | \mu\}}{1 - P} f(\mu) d\mu$$

If $\mu$ did not vary, then $\alpha$ would be directly related to the confidence level at which the null hypothesis could be rejected when $X \geq c$. That confidence level, which applies to citations issued in accordance with the CTV table, is defined as the minimum possible value of $1 - Prb\{X \geq c | \mu\}$, subject to the restriction that $\mu \leq S$. There is a subtle but extremely important distinction between this and $1 - \alpha$. Among all those shifts on which $\mu \leq S$, $Prb\{X \geq c | \mu\}$ is maximized when $\mu = S$. Therefore, the minimum possible value of $1 - \alpha$, arises when $\mu = S$ on every shift. The resulting confidence level for concluding $\mu > S$ when $X \geq c$ is equal to $1 - Prb\{X \geq c | \mu = S\}$. For the value of $CV_{total}$ described above (i.e., 6.6% when $\mu = S = 2.0$ mg/m$^3$), this works out to a confidence level of 0.99, or 99%.

Although MSHA interprets the Mine Act as requiring $\mu \leq S$ on each shift at any location to which a miner in the active workings is exposed, citations for noncompliance are intended to apply only to the shift and location sampled. Therefore, MSHA makes no assumption regarding the relative frequency distribution of $\mu$ from shift to shift. This is consistent with the concept of defining the confidence level according to the scenario most susceptible to an erroneous determination under the null hypothesis. However, the resulting confidence level for citing when $X \geq c$ really applies only to the hypothetical case most susceptible to erroneous citation.

In reality, so long as $\mu$ falls below S on some shifts, $\alpha$ will be smaller than 0.01. The further $\mu$ falls below the applicable standard, and the more shifts on which this occurs, the less likely it becomes that measurement error alone ($\varepsilon$) will be great enough to cause $X \geq c$ on a shift randomly selected for inspection. For example, if S = 2.0 mg/m$^3$, then c = 2.33 mg/m$^3$.

Therefore, if $\mu$ = 1.8 mg/m$^3$, a citation would be issued only if $\varepsilon \geq c - \mu$. An $\varepsilon \geq 0.53$ mg/m$^3$ (resulting in $X \geq 2.33$ mg/m$^3$) amounts to a measurement error greater than 29 percent of the true dust concentration. If the sample is valid, then the probability of such an occurrence (given that $CV_{total}$ = 6.6% at $\mu$ = 1.8 mg/m$^3$) is less than 4 per million. This illustrates the general point that $Prb\{X \geq c | \mu\}$ can be far less than 0.01 when $\mu < S$.

Since $Prb\{X \geq c | \mu\}$ is smaller the further $\mu$ falls below S, $Prb\{X \geq c | \mu \leq S\}$ depends on the probability distribution of $\mu$. This probability distribution is expressed by the relative frequency with which $\mu$ assumes each possible dust concentration at or below S. If $\mu$ falls substantially below the applicable standard on many shifts, then many of the corresponding values of $Prb\{X > c | \mu\}$ averaged into the calculation of $\alpha$ should be much smaller than 0.01, as shown by the foregoing example. Consequently, in a mining environment where the dust concentration is usually well below the applicable standard, $\alpha$ can reasonably be expected to fall substantially below its maximum possible value.

The number of erroneous citations expected ($N_\alpha$), is obtained by first multiplying the total number of production shifts during the period of interest by the expected proportion of these shifts for which $\mu \leq S$. This proportion is $1 - P$. The result is the number of production shifts expected to be in compliance at the sampling location. This must then be multiplied by $\alpha$ to calculate $N_\alpha$.

In Case 1, which is based on real sampling data (submitted by commenters), $E\{\mu\}$ is 1.66 mg/m$^3$ and $SD\{\mu\}$ is 0.70 mg/m$^3$. As mentioned earlier, P is expected to be 0.25 in this case. This distribution results in a negligible probability of citing when the mine atmosphere sampled is in compliance: $\alpha$ = 0.00012. If 10,000 production shifts are sampled in this type of environment, 7500 of these would be expected to be in compliance at the sampling location. Approximately one of these 7500 samples (i.e., 7500•$\alpha$) would be erroneously cited.

In Case 2, which is meant to represent a more controlled mining environment, less than one percent of the shifts are expected to exceed the standard: P = 0.0037. Furthermore, $\mu$ can be expected to fall below the geometric mean of 1.18 mg/m$^3$ on about half of the shifts. Therefore, $\alpha$ is even smaller than in the first case: $\alpha$ = 0.0000079. Out of 10,000 sampled shifts, 9963 would be expected to be in compliance. Since 9963 •$\alpha$ is less than 0.1, it is unlikely that any of these shifts would be cited erroneously.

Case 3 is meant to represent a poorly controlled mining environment, in which $E\{\mu\}$ exceeds the applicable standard and the coefficient of variation in shift-to-shift dust concentrations is a relatively high 60% (i.e., 1.32 ÷ 2.20). The geometric mean, however, falls slightly below the applicable standard, so $\mu$ is expected to fall below the applicable standard on more than 50% of the shifts. The noncompliance fraction is expected to be P = 0.46. Also, because of the high shift-to-shift variability, $\mu$ is not very close to its geometric mean on most shifts, and a fairly large percentage of shifts can be expected to experience $\mu$ well below the standard. The probability of citing when the mine atmosphere is in compliance is: $\alpha$ = 0.00015. If 10,000 of shifts in this environment are sampled, then 5400 of these shifts would be expected to comply with the applicable standard at the sampling location. As in Case 1, an erroneous citation would be expected on about one of these shifts.

2. $\alpha^* = Prb\{\mu \leq S \text{ and } X \geq c\}$

The probability of erroneous citation can also be defined unconditionally. The second way of interpreting this risk represents the proportion of all measurements expected to result in an erroneous citation. Let $\alpha^* = Prb\{\mu \leq S \text{ and } X \geq c\}$ be the probability that a shift and/or mine atmosphere randomly selected for inspection is in compliance but, because of measurement error, is nevertheless cited. For an erroneous

citation to occur, two events must take place: first, the atmosphere sampled must be in compliance ($\mu \leq S$); second, a measurement error must occur of sufficient magnitude that a citation is issued ($X \geq c$). The probability that a randomly selected shift will be in compliance is $Prb\{\mu \leq S\} = 1-P$. The probability of citation, given compliance on the sampled shift, has already been quantified above as $Prb\{X \geq c | \mu \leq S\} = \alpha$. The probability that both events occur is the product of these two probabilities—i.e.,

$$Prb\{\mu \leq S \text{ and } X \geq c\} = Prb\{\mu \leq S\} \cdot Prb\{X \geq c | \mu \leq S\}$$

Therefore, $\alpha^* = (1-P) \cdot \alpha$.

If the applicable standard is exceeded on all shifts, it is exceeded on the shift sampled, so there is no chance of erroneously citing that shift: i.e., P = 1, so $\alpha^* = (1-1) \bullet \alpha = 0$. At the opposite limit, if the applicable standard is never exceeded, then P = 0 and $\alpha^* = \alpha$. Between these two extremes, $\alpha^*$ decreases as the noncompliance fraction P increases, so that $\alpha^*$ is always less than $\alpha$. To get the number of erroneous citations, $\alpha^*$ is simply multiplied by the number of shifts sampled. This always gives an identical result for $N_\alpha$ as that obtained from multiplying the number of compliant shifts by $\alpha$.

In Case 1, P = 0.25. Therefore, the probability of erroneously citing a randomly selected shift is $\alpha^* = 0.75 \bullet \alpha = 0.00009$, or about nine in 100,000. If 10,000 shifts are sampled, then 10,000 $\bullet \alpha^*$ gives the same number of erroneous citations as $\alpha$ multiplied by the 7500 compliant shifts expected in this case.

In the relatively well-controlled environment exemplified by Case 2, dust concentrations on most shifts generally fall well below the standard. Only occasional excursions approaching or (rarely) exceeding the standard occur, so P is near zero. Therefore, $\alpha^*$ is only slightly smaller than $\alpha$. Since P = 0.0037, $\alpha^* = 0.9963 \bullet \alpha$. In this environment, the chance of erroneously citing a randomly selected shift is less than one in 100,000.

In Case 3, the noncompliance fraction is much greater: *P* = 46%. Therefore, $\alpha^*$ is substantially smaller than $\alpha$. In this environment the probability of erroneously citing a randomly selected shift is $\alpha^* = 0.00008$, or about eight in 100,000.

3. $\alpha^\circ = Prb\{\mu \leq S | X \geq c\}$

Finally, the risk of an erroneous citation can be interpreted as the probability, given a measurement of sufficient magnitude to warrant citation ($X \geq c$), that the dust concentration measured actually complies with the standard ($\mu \leq S$). Let $\alpha^\circ = Prb\{\mu \leq S | X \geq c\}$ denote this probability, which represents the expected proportion of all citations issued because of measurement error. If any particular citation, based on a valid single, full-shift measurement, is selected for scrutiny, then $\alpha^\circ$ is the probability that this citation is erroneous. Using the definition of conditional probability:

$$\begin{aligned}
\alpha^\circ &= Prb\{\mu \leq S | X \geq c\} \\
&= \frac{Prb\{\mu \leq S \text{ and } X \geq c\}}{Prb\{X \geq c\}} \\
&= \frac{\alpha^*}{Prb\{X \geq c \text{ and } \mu \leq S\} + Prb\{X \geq c \text{ and } \mu > S\}} \\
&= \frac{\alpha^*}{\alpha^* + Prb\{X \geq c | \mu > S\} \cdot Prb\{\mu > S\}} \\
&= \frac{\alpha^*}{\alpha^* + P \cdot Prb\{X \geq c | \mu > S\}}
\end{aligned}$$

$Prb\{X \geq c | \mu > S\}$ represents the power of the citation criterion to identify cases of noncompliance when they actually occur. This probability is calculated as follows:

$$Prb\{X \geq c | \mu > S\} = \int_S^\infty \frac{Prb\{X \geq c | \mu\}}{P} f(\mu) d\mu$$

When the distribution of dust concentrations is such that the applicable standard is rarely exceeded (i.e., when *P* is near zero), the denominator in the expression for $\alpha^\circ$ namely

$$Prb\{X \geq c\} = \alpha^* + P \cdot Prb\{X \geq c | \mu > S\},$$

is only slightly greater than the numerator, $\alpha^*$. This implies that $\alpha^\circ$ is not constrained to be smaller than $\alpha$ or $\alpha^*$. Since this situation arises in environments where the applicable standard is rarely exceeded, such citations will not often be issued. However, when one is issued, the probability that it is erroneous can exceed $\alpha$.

For example, in the relatively well-controlled environment exemplified by Case 2, $\alpha^*$ is 0.00000788, *P* is 0.00370, and $Prb\{X \geq c | \mu > S\} = 0.133$. Therefore, in this example, $\alpha^\circ = 0.0158$, or about 1.6 percent. That is to say, 1.6 percent of the citations issued under these circumstances will be erroneous. This is considerably greater than $\alpha$, which was earlier shown to equal only 0.00079 percent. However the expected proportion of measurements resulting in citation, given by $Prb\{X \geq c\}$, is only 0.000498, or 0.050%. Therefore, out of

10,000 shifts sampled, it is expected that only five would be cited. Since on average only 1.6% of these five citations would be erroneous, it is unlikely that the 10,000 samples would result in any erroneous citations.

Case 2 represents an environment in which the noncompliance fraction is less than one percent. In contrast, the noncompliance fraction in Case 3 is nearly 50%: $P = 0.458$. For this case, $\alpha = 0.000147$, $\alpha^* = 0.0000799$, and $\alpha^\circ = 0.000227$. The calculated value of Prb{X≥c} is 0.3513, so approximately 35 percent of all measurements would result in citation. Only about 0.027% of these citations, however, would be erroneous. Therefore, out of 10,000 shifts sampled in such an environment, 3513 citations could be expected; and only about one of these citations ($3513\alpha\bullet^\circ$) would be expected to be erroneous.

In Case 2, the probability ($\alpha^\circ$) that a given citation is erroneous is relatively high (though low enough to sustain a citation), but the probability of citing noncompliance in such an environment is very low. In Case 3, the probability of citation is more than 700 times higher, but $\alpha^\circ$ is commensurately lower than in Case 2. Comparison of Cases 2 and 3 illustrates the general principle: as the noncompliance fraction *P* increases, the probability of citation increases but the probability that a given citation is erroneous decreases.

It is important to note that even in the well-controlled environment of Case 2, the probability that a given citation is erroneous ($\alpha^\circ$) remains substantially below five percent and far below 50 percent. Although environments even more well controlled could give rise to somewhat greater values of $\alpha^\circ$, the probability of citing in such environments would be even smaller than the probability in Case 2. If a citation is issued because $X > c$, then the probability that $\mu > S$ is simply $1 - \alpha^\circ$. This shows that in any particular instance where a citation based on a single, full-shift measurement is reasonably likely to be issued according to the CTV table, there would be compelling evidence that $\mu > S$.

## V. Risk of Erroneous Failure to Cite

Use of the CTV implies that citations will be issued only when they can be issued with high confidence that the applicable standard has actually been exceeded on the shift sampled. On the other hand, failure to meet or exceed the CTV does not in itself imply compliance at a similarly high confidence level—even on the shift sampled, let alone continuously over any longer term. Because of limited resources, MSHA inspections are relatively infrequent and serve only to identify instances in which the rest of the dust control program has been ineffective. They cannot be relied upon to ensure continuous compliance.

It should be remembered, however, that MSHA does not rely exclusively on sampling by inspectors to ensure compliance. The MSHA inspection is only one element of the Agency's comprehensive health protection program, which includes mandatory implementation and maintenance by operators of effective dust control methods to control dust levels where miners normally work or travel. It also provides for periodic evaluation by mine operators of the quality of mine air and of the effectiveness of the operator's dust control system through operator bimonthly sampling. If they are not detected during an MSHA inspection, poorly controlled environments, which are out of compliance with the dust standard in a substantial fraction of instances, are likely to be detected during some other phase of the MSHA's enforcement program.

It should also be remembered that MSHA's new enforcement policy eliminates an important source of sampling bias due to averaging, as explained in Appendix A. Under the existing policy, measurements made at the dustiest occupational locations or during the dustiest shifts sampled are diluted by averaging them with measurements made under less dusty conditions. As shown by the SIP data, this practice has frequently caused failures to cite clear cases of excessive dust concentration.

### 1. $\beta = Prb\{X<c|\mu>S\}$

The complement of *power*, the probability of detecting cases of noncompliance when they occur, is the probability of erroneously failing to detect such cases. Let $\beta = Prb\{X<c|\mu>S\}$ be the probability that a citation will not be issued when the true dust concentration being measured exceeds the standard. This is the probability of what is commonly called Type II error for testing the null hypothesis that $\mu \leq S$. Since $\beta = 1 - Prb\{X\geq c|\mu>S\}$, the power of the citation criterion, formulated earlier as $Prb\{X\geq c|\mu>S\}$, can be used to calculate $\beta$. The expected number of erroneous failures to cite, $N_\beta$ is obtained by multiplying $\beta$ by the number of shifts for which $\mu > S$.

It is true that due to the high confidence level required for citation, $\beta$ is greater than it would be if a citation were issued whenever $X > S$. In fact, setting the CTV to any value greater than S results in $Prb\{X<c|\mu\}$ potentially greater than 50 percent when a single dust concentration exceeding the standard is being measured. For example, if $\mu = 2.12$ mg/m$^3$ and $S = 2.0$ mg/m$^3$, then the CTV is $c = 2.33$ mg/m$^3$. Since the probability distribution for X is centered on $\mu$, any individual measurement is more likely to fall below the CTV than to exceed it. The probability of erroneously failing to cite in this instance, based only on a single measurement, would be $Prb\{X<2.33|\mu=2.12\} = 93$ percent.

Citing in accordance with the CTV table does not, however, necessarily result in $\beta > 50\%$. When more than one measurement is made during a single shift in the same general area of a mine, such as in the same MMU, the dust concentrations are correlated. This increases the chances that if $\mu$ exceeds the standard at one of the sampled locations, at least one of the measurements will meet the citation criteria. More importantly for the present discussion, however, the value of $\beta$ depends on the distribution of $\mu$ even when only a single measurement is considered on each shift.

This is because the magnitude of $\beta$ depends on the average magnitude of $Prb\{X<c|\mu\}$ over all those instances in which $\mu > S$. Although $Prb\{X<c|\mu\}$ exceeds 50 percent when $\mu < c$, it does not exceed 50 percent when $\mu > c$. Poorly controlled environments are likely to experience a significant number of shifts during which $\mu$ exceeds not only S but also the CTV. If these shifts ''outweigh'' those shifts on which $S < \mu \leq c$, then this will result in $\beta < 50$ percent.

On those shifts for which $\mu > S$, $Prb\{X<c|\mu\}$ exceeds 50% only when $\mu$ falls between S and c. In contrast, the range of potential values of $\mu>c$ is essentially unlimited, and $Prb\{X<c|\mu\}$ approaches zero as $\mu$ increases. Therefore, $\beta$ is less than 50% whenever the distribution of $\mu$ is such that $Prb\{\mu>c\} > Prb\{S<\mu\leq c\}$. In a poorly controlled environment, $\mu$ is more likely to exceed the CTV than to fall into the relatively narrow interval between S and the CTV.

For example, in Case 1 the probability that $\mu$ exceeds $c = 2.33$ is 14.9 percent, whereas the probability that $\mu$ falls between S and c is only $P - 14.9 = 10.5$ percent. Therefore, in this environment, the probability of erroneously failing to cite an instance of $\mu > S$ works out to be somewhat less than 50 percent: $\beta = 1 - Prb\{X\geq c|\mu>S\} = 0.404$, or 40.4%.

For worse offenders, $\beta$ is considerably smaller. In Case 3, $Prb\{\mu>c\} = 35.2\%$, whereas $Prb\{S<\mu\leq c\}$ is 10.6%. In this case, even though dust concentrations below the applicable standard are

expected on a majority of shifts (as indicated by the geometric mean), β is calculated to be only 23.3%. Stated another way, if MSHA were to select 10,000 shifts in this environment, an expected 4580 of those shifts would be out of compliance. It is expected that on 76.7% of those 4580 shifts a single measurement would be sufficiently large to warrant citation.

There are inherent tradeoffs, not only between β and α, but also between β and the probability that a given citation is erroneous, $\alpha^\circ = Prb\{\mu \leq S | X \geq c\}$. Decreasing the CTV in order to reduce β forces both α and $\alpha^\circ$ to increase. Even if α remains below 50 percent, the effect on $\alpha^\circ$ can be so great as to render some citations clearly unsustainable. In particular, setting the CTV at or near S could result in citations more likely than not to be erroneous. Circumstances in which this can occur are discussed in Appendix D. Use of the CTV, on the other hand, ensures that any given citation based on $X \geq c$ is more likely than not to represent a case of actual noncompliance (i.e., $\mu > S$).

Failure to issue a citation based on a single, full-shift measurement collected during an MSHA inspection does not imply failure to detect and correct a noncompliant condition in the context of MSHA's entire enforcement program. Those commenters expressing concern over the potential magnitude of β have largely ignored other means MSHA uses to protect miners from excessive dust concentrations relative to the longer term. As stated earlier in this notice, MSHA's health protection program provides for the implementation and maintenance by mine operators of effective methods to control dust concentrations where miners normally work or travel, as well as for periodic evaluation of the quality of mine air to which miners may be exposed and the effectiveness of the operator's dust control program through operator bimonthly sampling. Furthermore, MSHA intends to continue its long-standing practice of collecting additional measurements when the standard is exceeded by an amount insufficient to warrant citation at a high confidence level.

VI. Summary and Conclusions

Use of the CTV table is based on MSHA's need for sufficient evidence to issue a citation and show, by a preponderance of the evidence, that a violation occurred. The burden rests with MSHA to show that the applicable standard has in fact been violated on the particular shift cited. Accordingly, the CTV table is designed so that the risk of erroneously not citing is subordinated to the risk of erroneously issuing a citation. However, the probability of erroneously failing to cite a case of noncompliance at a given sampling location is less than 50 percent when the applicable standard is exceeded on a significant proportion of shifts at that location.

Three cases were used to illustrate the risk of erroneous enforcement determinations over a broad range of environmental conditions. The results calculated for each of the three cases considered are summarized in the following table.

| Case | Probability (percent) | | | | | | Average number of erroneous determinations (per 10,000 sampled shifts) | |
|---|---|---|---|---|---|---|---|---|
| | Prb{X>S} | Prb{X≥c} | α | α* | α° | β | $N_\alpha$ | $N_\beta$ |
| 1 | 25.51 | 15.14 | 0.0121 | 0.00903 | 0.060 | 40.4 | 0.9 | 1,026 |
| 2 | 0.53 | 0.05 | .000791 | .000788 | 1.581 | 86.7 | .1 | 32 |
| 3 | 45.69 | 35.17 | .0147 | .00799 | 0.0227 | 23.3 | .8 | 1,067 |

Based on this analysis, it can be concluded that application of the CTV table provides ample protection against erroneous citations. The probability (α) of issuing a citation when the mine atmosphere sampled is actually in compliance is constrained to fall below a maximum of five percent. This maximum defines the 95-percent confidence level claimed for any citation issued. The expected proportion (α*) of all valid samples resulting in an erroneous citation is constrained not to exceed α. In practice, both α and α* are expected to fall far below five percent in a broad range of mining environments.

Furthermore, even in an exceptionally well-controlled environment, where μ is very unlikely to exceed the applicable standard on any particular shift, the probability ($\alpha^\circ$) that a given citation is erroneous will also fall substantially below five percent. If a measurement exceeds the CTV, the probability that the standard has actually been exceeded is ($1-\alpha^\circ$). Therefore, any citation issued in accordance with the CTV table will be based on clear and compelling evidence that the standard has been exceeded on the particular shift sampled.

Although it is increased by the margin of error built into the CTV table, the probability (β) of erroneously failing to cite noncompliance using a single measurement is expected to be significantly less than 50 percent in mining environments where $\mu > S$ on a substantial percentage of shifts. For the example considered of a poorly controlled mining environment (Case 3), β was calculated to be about 23 percent. This means that on any given shift for which $\mu > S$, there would be a 77-percent chance that X would exceed the CTV, thereby warranting a citation. Despite the high confidence level required for single-sample citations, β is considerably less than 50 percent even in the better-controlled environment exemplified by Case 1. Although citing whenever $X > S$ would increase the probability of detecting conditions of excessive dust concentration, Appendix D shows that doing so instead of using the CTV table could result in citations under conditions of probable compliance. As shown by the small values of $\alpha^\circ$ in the table above, use of the CTV table makes it very unlikely that this would happen.

Moreover, poorly controlled environments are likely to be detected and cited during some other phase of MSHA's enforcement program even if they are not immediately cited on a particular MSHA sampling inspection. Regardless of the value of β, it can safely be concluded that the risk of failing to detect excessive dust is lower under MSHA's new enforcement policy than under existing procedures, in which measurements of high dust concentration are diluted by averaging.

*Appendix D—Consequences of Eliminating the Margin of Error*

Several commenters objected to the emphasis placed on avoiding erroneous citations and took issue with MSHA's intention to cite noncompliance only when indicated at a high confidence level. These commenters proposed that it is unfair to limit citations to cases in

which a measurement (X) meets or exceeds some critical value (c) greater than the applicable standard (S). They argued that such an approach unfairly exposes miners to a far higher probability of wrongly failing to cite than the maximum probability specified for wrongly citing. Their recommendation was to divide the burden equally between proving noncompliance and ensuring compliance. They maintained that if X exceeds S by an arbitrarily small amount, noncompliance is more likely than compliance and that under such circumstances a citation should be issued.

Using notation explained in Appendix C, $X = \mu + \varepsilon$, where $\varepsilon$ is a random, normally distributed measurement error whose standard deviation is $\sigma = \mu \cdot CV_{total}$. $CV_{total}$ is given by the formula presented in Appendix C. A citation based on a single, full-shift measurement applies specifically to the shift and location sampled, and hence to a distinct value of $\mu$. For the citation to be upheld, the preponderance of evidence must indicate that $\mu > S$ at one or more of the sampling locations on the cited shift.

Those commenters who maintained that a citation should be issued whenever X > S all assumed (1) that a citation could withstand legal challenge so long as noncompliance is more likely than compliance, even if the probability of compliance is nearly 50 percent; and (2) that if X > S, then noncompliance is more likely than compliance. Aside from the question of the legal validity of the first assumption (which equates preponderance of evidence with any probability greater than 50 percent), the second assumption is not always true. Specifically, the second assumption fails to hold in relatively well-controlled environments or in cases where more than one measurement is used to check for noncompliance. Commenters making this assumption confused $Prb\{X>S|\mu\leq S\}$ with $Prb\{\mu\leq S|X>S\}$ and also failed to consider citations based on the maximum of several measurements.

I. Well-controlled Environments

In a relatively well-controlled environment, where $\mu$ is generally below the applicable standard, the probability that X > S due to a large value of $\varepsilon$ can exceed the probability that X > S due to $\mu$ > S. If X < c and sampling records indicate that the environment is relatively well-controlled, the preponderance of evidence may support $\mu \leq S$ on the particular shift sampled.

For example, suppose a citation is based on a single, full-shift measurement that barely exceeds S=2.0 mg/m$^3$, but dust sampling records for the environment indicate a pattern of dust concentrations resembling Case 2 in Appendix C. That is to say, the statistical distribution of $\mu$ is lognormal, with arithmetic mean and standard deviation of 1.2 mg/m$^3$ and 0.24 mg/m$^3$, respectively. As in Appendix C, let $f(\mu)$ denote the lognormal probability density function. Then the probability that $\mu \leq S$, given a single full-shift measurement that falls between S and c, is:

$$\begin{aligned}
\mathrm{Prb}\{\mu \leq S | S < X \leq c\} &= \frac{\mathrm{Prb}\{S < X \leq c \text{ and } \mu \leq S\}}{\mathrm{Prb}\{S < X \leq c\}} \\
&= \frac{\int_0^S \mathrm{Prb}\{S < X \leq c | \mu\} f(\mu) d\mu}{\int_0^\infty \mathrm{Prb}\{S < X \leq c | \mu\} f(\mu) d\mu} \\
&= \frac{0.00252}{0.00481} \\
&= 0.52\%.
\end{aligned}$$

In other words, when X falls between S and c in this environment, there is a 52-percent chance that the standard has not actually been exceeded. It is more likely that X>S due to a large measurement error than because $\mu$ itself has exceeded the applicable standard. It would be unreasonable to cite noncompliance in such situations. By citing when and only when $X \geq c$, the probability that $\mu \leq S$ is reduced to $\alpha^\circ = 1.5\%$, as shown for Case 2 in Appendix C.

II. Multiple Samples

Proponents of citing whenever X>S based their argument on a premise of symmetry: since potential measurement errors ($\varepsilon$) are symmetrically distributed around $\mu$, they assumed that citing when X=S would result in equal probabilities of erroneously citing and erroneously failing to cite. From this, they argued that if X>S by an arbitrarily small amount, the probability of erroneously failing to cite would exceed the probability of erroneously citing.

The symmetry argument for citing whenever X>S fails to hold if, on a single inspection, more than one measurement is compared to the standard. In MSHA's dust inspection program, several measurements are routinely made on the same shift, within the same MMU. MSHA intends to use each of these measurements individually to determine noncompliance at the MMU. However, as described in the notice to which this Appendix is attached, no more than one citation will be issued based on single, full-shift measurements from the same MMU. The commenters advocating issuance of a citation whenever X>S all endorsed such single-sample determinations. Since any of several measurements could warrant a citation against the MMU, the citation will be based, in most cases, on the maximum measurement taken in the MMU during the shift. If each of several measurements is compared directly to the applicable standard, then the symmetry assumed for citing whenever X>S breaks down. The mistake of wrongly citing occurs when any one of the measurements exceeds the applicable standard because of a sufficiently large measurement error, but the mistake of wrongly failing to cite occurs only when each and every measurement is at or below the standard. Each additional measurement reduces the probability of erroneously failing to cite while increasing the probability of erroneously citing.

A few examples will be used to demonstrate how the premise of symmetric error probabilities breaks down when more than a single measurement is taken. These examples demonstrate that noncompliance determinations made by comparing so few as two measurements directly to the S can result in citations issued at a confidence level substantially below 50 percent.

Using I to index different valid measurements for the same MMU, let $\max\{X_i\}$ denote the maximum measurement, and let $\max\{\mu_i\}$ denote the maximum true dust concentration. Note that due to potential measurement errors, the maximum dust concentration does not necessarily correspond to the maximum measurement. For example, $\max\{X_i\}$ might be $X_3$ even though $\max\{\mu_i\}=\mu_2$. Since the object is to examine the consequences of citing whenever any of several measurements exceeds S by any amount, it will be assumed in these examples that the citation criterion is $\max\{X_i\}>S$ rather than $\max\{X_i\}>c$.

As in Appendix C, let $\alpha$ be the probability of citing under conditions of compliance, and let $\beta$ be the probability of erroneously failing to cite. Then:

$$\alpha = \text{Prb}\{\max\{X_i\} > S | \max\{\mu_i\} \le S\} \text{ and } \beta = \text{Prb}\{\max\{X_i\} \le S | \max\{\mu_i\} > S\}.$$

For simplicity, suppose S=2.0 mg/m$^3$. The following quantities will be used in the calculations:

| $\mu$ (mg/m$^3$) | $CV_{total}$ (percent) | $\sigma=\mu \cdot CV_{total}$ (mg/m$^3$) | Prb{X>2.0\| $\mu$} (percent) | Prb{X≤2.0\| $\mu$} (percent) |
|---|---|---|---|---|
| 1.90 | 6.602 | 0.1254 | 21.3 | 78.7 |
| 1.99 | 6.596 | 0.1385 | 47.1 | 52.9 |
| 2.00 | 6.595 | 0.1319 | 50.0 | 50.0 |
| 2.01 | 6.595 | 0.1326 | 53.0 | 47.0 |

If exactly one measurement is taken and $\mu$=1.99 mg/m$^3$, then $\sigma$=0.1385 mg/m$^3$. Using the standard normal probability distribution for $\varepsilon/\sigma$,

$$\begin{aligned}\alpha &= \text{Prb}\left\{X > 2.0 | \mu = 1.99\right\} \\ &= \text{Prb}\left\{\frac{X-1.99}{0.1385} > \frac{2.0-1.99}{0.1385}\right\} \\ &= \text{Prb}\left\{\frac{\varepsilon}{\sigma} > 0.0722\right\} \\ &= 47.1\%.\end{aligned}$$

On the other hand, if $\mu$=2.01 mg/m$^3$, then $\sigma$=.1319 mg/m$^3$; so

$$\begin{aligned}\beta &= \text{Prb}\left\{X \le 2.0 | \mu = 2.01\right\} \\ &= \text{Prb}\left\{\frac{X-2.01}{0.1326} \le \frac{2.0-2.01}{0.1326}\right\} \\ &= \text{Prb}\left\{\frac{\varepsilon}{\sigma} \le -0.0754\right\} \\ &= 47.0\%.\end{aligned}$$

It is this approximate equality of $\alpha$ and $\beta$, for values of $\mu$ symmetrically falling below or above S=2.0 mg/m$^3$ that motivates the premise of symmetric error probabilities.

Suppose now that two measurements are taken, and a citation is issued if either $X_1$ or $X_2$ exceeds S=2.0. Suppose further that $\mu_1$=1.99 and $\mu_2$=1.90. Then:

$$\begin{aligned}\alpha &= \text{Prb}\{\max\{X_i\} > S | \mu_1 = 1.99 \text{ and } \mu_2 = 1.90\} \\ &= 1 - \text{Prb}\{X_1 \le 2.0 | \mu_1 = 1.99\} \cdot \text{Prb}\{X_2 \le 2.0 | \mu_2 = 1.90\} \\ &= 1 - (0.531) \cdot (0.789) \\ &= 58\%.\end{aligned}$$

Since a citation is justified if $\mu_i > S$ for any I, the greatest probability of wrongly not citing in a comparable case of noncompliance is obtained when $\mu_1$=2.01 and $\mu_2$ is held at 1.90. In that case:

$$\begin{aligned}\beta &= \text{Prb}\left\{\max\left\{X_i\right\} \le S | \mu_1 = 2.01 \text{ and } \mu_2 = 1.90\right\} \\ &= \text{Prb}\left\{X_1 \le 2.0 | \mu_1 = 2.01\right\} \cdot \text{Prb}\left\{X_2 \le 2.0 | \mu_2 = 1.90\right\} \\ &= (0.470) \cdot (0.787) \\ &= 37\%.\end{aligned}$$

This example illustrates the point that $\alpha$ can exceed $\beta$ by a substantial amount when as few as two measurements are directly compared to the applicable standard. If $\mu_2$ were actually 1.99, then the discrepancy would be even greater: $\alpha$=72% and $\beta$=25%. Notice, furthermore, that in both cases, $\alpha$ would be greater than 50%. The confidence level at which a citation is issued depends on the maximum possible value of $\alpha$. Therefore, when one measurement out of two marginally exceeds S, the confidence level at which a citation can be issued is less than 28% (i.e., 100% − 72%). Such a citation would be difficult to defend if challenged.

If five measurements are made, as is routinely done during MSHA inspections of an MMU, then citing whenever max{$X_i$}>S is even less defensible. The confidence level for a citation based on the maximum of five measurements is defined by the value of $\alpha$ when $\mu_i$=S for all five values of I. Under these circumstances, the probability that at least one of the five measurements would exceed the applicable standard is:

$$\alpha = \mathrm{Prb}\left\{\max\left\{X_i\right\} > S \middle| \mu_i = S \text{ for all } i\right\}$$

$$= 1-(0.5)^5$$

$$= 97\%.$$

Therefore, the confidence level at which a citation could be issued is only 3%. At the same time, the probability that none of the five measurements will exceed S is $\beta=(0.5)^5=3\%$, so the probability that a citation would be issued is 97%.

III. Conclusion

MSHA, along with other federal agencies, recognizes that in issuing citations, the burden rests with the Agency to show that a violation of the applicable standard occurred. Use of the CTV table will severely limit the risk of an erroneous citation, even when the true dust concentration being measured is exactly equal to or slightly below the applicable standard. If a single measurement falls between S and the CTV, then the measurement does not necessarily provide sufficient evidence of $\mu$>S to support a citation. Consequently, MSHA cannot justify issuing a citation whenever a measurement exceeds the applicable standard by an arbitrarily small amount. Although citing whenever X>S would result in a smaller probability ($\beta$) of erroneously failing to cite, and hence in a greater level of protection for the miner, doing so would result in citations that may not withstand legal challenge. However, as stated earlier in the notice, if the measurement exceeds the applicable standard but not the CTV, MSHA intends to target environments for additional sampling to confirm that dust control measures in use are adequate. These follow-up inspections, in conjunction with operator dust sampling and MSHA monitoring of operator compliance with approved dust control parameters, should further help to protect miners from excessive dust concentration.

## References

1. Kogut, J. Memorandum of September 6, 1994, from Jon Kogut, Mathematical Statistician, Denver Safety and Health Technology Center, MSHA, to Ronald J. Schell, Chief, Division of Health, Coal Mine Safety and Health, MSHA, Subject: *Multi-day MSHA Sampling of Respirable Coal Mine Dust.*

2. Kogut, J. Memorandum of September 6, 1994, from Jon Kogut, Mathematical Statistician, Denver Safety and Health Technology Center, MSHA, to Ronald J. Schell, Chief, Division of Health, Coal Mine Safety and Health, MSHA, Subject: *Coal Mine Respirable Dust Standard Noncompliance Determinations.*

3. Leidel, N.A. and K.A. Busch. *Statistical Design and Data Analysis Requirements.* Patty's Industrial Hygiene and Toxicology, Third Edition, Vol. 3, Part A, Chapter 10, 1994.

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5. Kennedy, E.R., T.J. Fischbach, R. Song, P.M. Eller, and S.A. Shulman. *Guidelines for Air Sampling and Analytical Method Development and Evaluation.* U.S. Department of Health and Human Services, Public Health Service, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 95–117.

Dated: December 19, 1997.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

**Note**: For the convenience of the user, notice document 97–33937 is being reprinted in its entirety because of numerous errors in the document originally appearing at 62 FR 68395–68420, December 31, 1997. Those wishing to see a listing of corrections, please call Patricia Silvey, Mine Safety and Health Administration, 703–235–1910.

[FR Doc. 97–33937 Filed 12–30–97; 8:45 am]

BILLING CODE 4510–43–P

Tuesday
February 3, 1998

# Part VI

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

**48 CFR Part 4, Et Al.**
**Federal Acquisition Regulation; Part 45 Rewrite; Proposed Rule**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 4, 7, 8, 15, 16, 17, 22, 27, 28, 31, 32, 35, 42, 43, 44, 45, 49, 51, 52, and 53**

**[FAR Case 95–013]**

## Federal Acquisition Regulation; Part 45 Rewrite

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of public meeting.

**SUMMARY:** A public meeting is being held to discuss revisions to the rewrite of Part 45 of the Federal Acquisition Regulation. The revisions simplify procedures and eliminate requirements related to the management and disposition of Government property in the possession of contractors.

**DATES:** *Public Meeting:* A public meeting will be conducted at the address shown below from 9:30 a.m. to 5:00 p.m., local time, on February 17, 1998, and February 18, 1998.

*Draft Materials:* Drafts of the materials to be discussed at the public meeting will be available electronically (www.acq.osd.mil/dp/mpi) or may be obtained from—Ms. Angelena Moy, (PDUSD(A&T)DP/MPI), Room 3C128, The Pentagon, Washington, DC 20301–3060.

**ADDRESSES:** The location of the public meeting is—1300 Wilson Boulevard, 8th Floor, Conference Room A, Rosslyn, VA.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena Moy by e-mail (moyac@acq.osd.mil) or telephone (703) 695–1097/1098, or fax (703) 695–7596.

**SUPPLEMENTARY INFORMATION:**

### Background

A proposed rule was published in the **Federal Register** at 62 FR 30186, June 2, 1997. In response to this proposed rule, 990 comments were received. The public meeting will provide a forum to discuss possible revisions to the proposed rule resulting from the public comments.

### List of Subjects in 48 CFR Parts 4, 7, 8, 15, 16, 17, 22, 27, 28, 31, 32, 35, 42, 43, 44, 45, 49, 51, 52, and 53

Government procurement.

Dated: January 29, 1998.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 98–2699 Filed 2–2–98; 8:45 am]

**BILLING CODE 6820–EP–M**

Federal Register

Tuesday
February 3, 1998

## Part VII

# The President

**Proclamation 7066—American Heart Month, 1998**

**Proclamation 7067—National African American History Month, 1998**

Federal Register
Vol. 63, No. 22
Tuesday, February 3, 1998

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7066 of January 30, 1998**

## American Heart Month, 1998

**By the President of the United States of America**

**A Proclamation**

Fifty years ago, a heart attack meant an end to an active lifestyle, and, for a third of those stricken, it meant death. Thankfully, the past half-century has brought us an array of advances in the prevention and treatment of heart disease. Procedures such as balloon angioplasty and coronary artery bypass grafts, noninvasive diagnostic tests, and drugs that treat high blood pressure and clots and reduce high blood cholesterol have enabled Americans to live longer and healthier lives. Equally important, we have become better educated during the past five decades about heart disease risk factors and how to control them.

This year, two of the groups most responsible for this remarkable progress—the National Heart, Lung, and Blood Institute and the American Heart Association—are celebrating their golden anniversaries. The National Heart, Lung, and Blood Institute, part of the National Institutes of Health, leads the Federal Government's efforts against heart disease by supporting research and education for the public, heart patients, and health care professionals. The American Heart Association plays a crucial role in the fight against heart disease through its research and education programs and its vital network of dedicated volunteers.

Despite the encouraging developments in that fight, we still face many challenges. Heart disease continues to be the leading cause of death in this country, killing more than 700,000 Americans each year. The number of Americans with heart disease or a risk factor for it is staggering. Approximately 58 million have some form of cardiovascular disease, about 50 million have high blood pressure, and about 52 million have high blood cholesterol. Americans are also becoming more overweight and less active—two key factors that increase the risk of heart disease. Most disturbing, for the first time in decades, Americans are losing ground against some cardiovascular diseases. The rate of stroke has risen slightly, the prevalence of heart failure has increased, and the decline in the death rate for those with coronary heart disease has slowed.

Women are particularly hard hit by this disease, in part because public health messages too often have not focused on how this segment of our population can best protect their hearts. The American Heart Association recently discovered that only 8 percent of American women know that heart disease and stroke are the greatest health threats for women, and 90 percent of women polled did not know the most common heart attack signals for women.

For a variety of reasons, including poorer access to preventive health care services, minorities in America have high mortality rates due to heart disease. The American Heart Association reported that, in 1995, cardiovascular disease death rates were about 49 percent greater for African American men than for white men, and about 67 percent higher for African American women than white women. In addition, the prevalence of diabetes—a major risk factor for heart disease—is very high in some of our Native American populations, and Asian Americans have a high mortality rate for stroke.

However, both the National Heart, Lung, and Blood Institute and the American Heart Association have undertaken activities to counter these trends. Both groups have initiated major efforts to better inform women and minorities about the threat of heart disease and the steps that can be taken both to prevent and treat it. These fine organizations also continue their efforts to educate health professionals on improving medical practice in heart health and to inform patients and the public about how to reduce their risk of heart disease. As we celebrate their 50th anniversaries, let us resolve to build on their record of accomplishment. By continuing our investment in research, raising public awareness of the symptoms of heart disease, and educating Americans about the importance of a heart-healthy diet and exercise, we can continue our extraordinary progress in saving lives and improving health.

In recognition of these important efforts in the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested that the President issue an annual proclamation designating February as ''American Heart Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim February 1998 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating cardiovascular disease and stroke.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of January, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

[FR Doc. 98–2777
Filed 2–2–98; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7067 of January 30, 1998**

## National African American History Month, 1998

**By the President of the United States of America**

**A Proclamation**

African American history is one of the great human chronicles of all time. It is the story of men and women who, with extraordinary courage and faith, prevailed against centuries of slavery and discrimination to build lives for themselves and their families and to contribute immeasurably to the strength and character of our Nation. It is the story of millions of people who arrived on these shores in chains, yet who had the greatness of heart and spirit to love this country for its possibilities. It is the story of generations of heroes who with their labor, voices, vision, and blood sought to change the essence of our society—our laws, institutions, and attitudes—to reflect the fundamental American ideals of freedom, justice, and equality. African American history is ultimately the story of America's struggle to become a more perfect union.

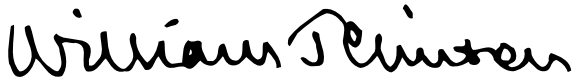
Each year during the month of February, we focus on a particular aspect of African American history to broaden our knowledge and deepen our appreciation of the countless contributions African Americans have made to the life of our Nation. This year's theme, ''African Americans in Business: The Path Towards Empowerment,'' presents an opportunity not only to celebrate these contributions, but also to build on them.

Our Nation's system of free enterprise has been a sure path to inclusion and independence for generations of Americans, and today African American entrepreneurs are reaping its many rewards. In every facet of American endeavor, in the fields of health care, law, government, and education; as artists, bankers, scientists, and computer programmers, African Americans are excelling and adding significantly to the strength of our economy. If current trends continue, African Americans will account for nearly 12 percent of the American labor force by the year 2000. And even more promising, according to the most recent data available from the U.S. Census, the number of businesses owned by African Americans has grown at an impressive annual rate and significantly faster than the number of new U.S. businesses overall. These statistics are a testament to the perseverance, hard work, and energy of African Americans and of their enduring faith in the American Dream.

As we celebrate National African American History Month, let us resolve to build on this record of success. We must ensure that every American shares equal access to a quality education—an education that will offer the knowledge and skills necessary to fill the jobs of the 21st century. We must strive to eradicate every trace of discrimination from our society and the American workplace. And we must work together—government, private industry, community organizations, and concerned citizens—to invest in all our people, providing them with the tools they need to succeed and widening the circle of opportunity.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 1998 as National African American History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate ceremonies, activities, and programs that raise awareness and appreciation of African American history.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of January, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



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**POSTAL SERVICE**

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Vessels bound for ports and places in U.S.; international safety management code certification status; correction; published 2-3-98

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The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

**Note:** A Cumulative List of Public Laws was published in the **Federal Register** on December 31, 1997.

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